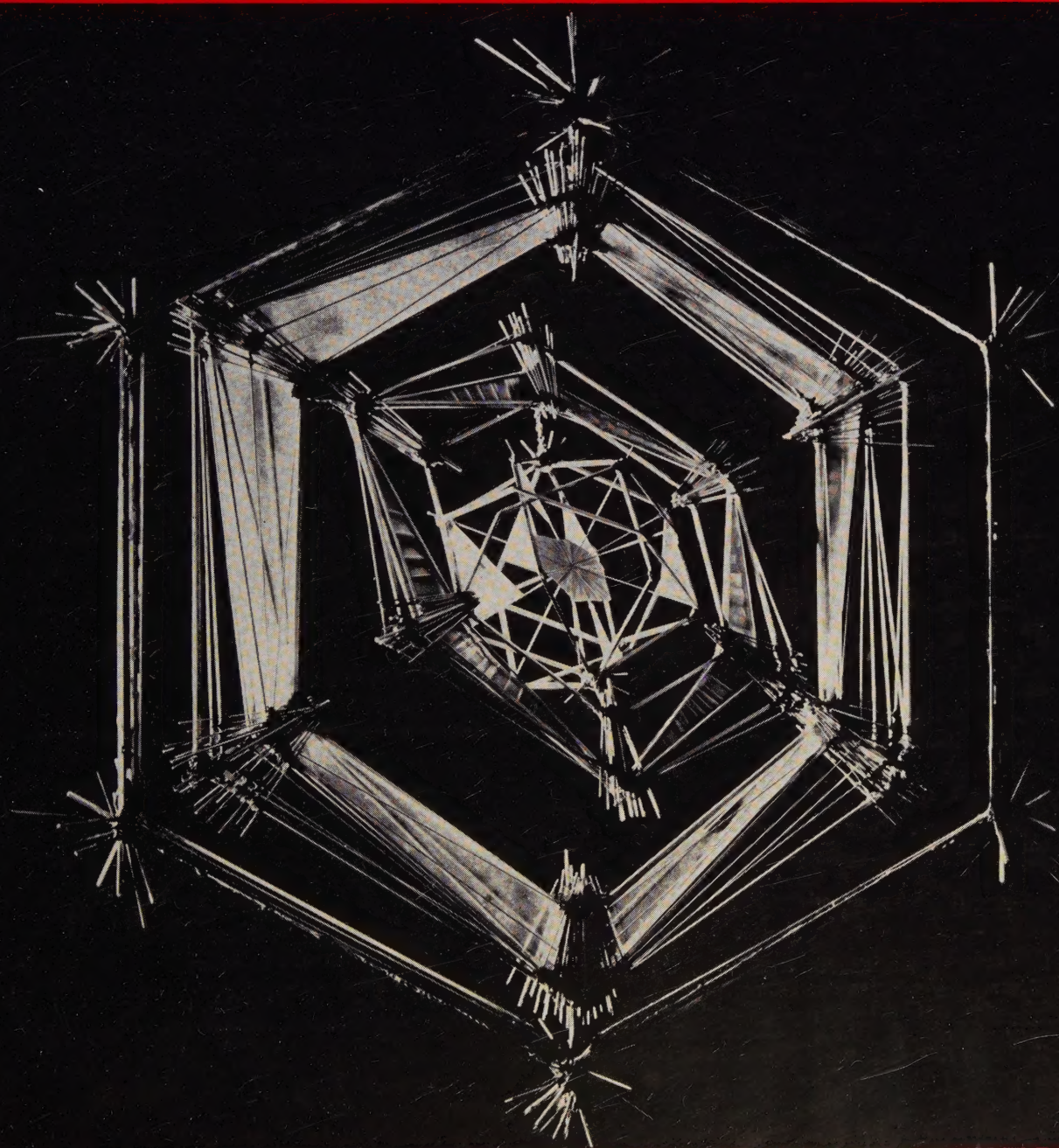


REVIEW

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Telegrams : Uniradio Geneva - Telex : 22 230 Geneva

EBU Technical Centre

Directorate : 32, avenue Albert Lancaster, Brussels, Belgium - Telephone : 74 58 30

Telegrams : Uniradio Brussels - Telex : 02 230 Brussels

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EDWARD STASHEFF

Professor of Speech, the University of Michigan, U.S.A.

VERNE WEBER

Staging Supervisor, the University of Michigan Television

Television production design in the United States

1. realism

1 **The Wheel and the Hook,** ▶
designer: Verne Weber, University of Michigan Television.

Cameo Staging (see under 1.9) is used here for an educational programme on the development of implements which advanced man's control of his environment. Fishing net, a wheel, and an anchor are suspended in space, with dramatic lighting. As in most examples of Cameo style, the viewer's imagination does half the work.



Television production in the United States of America is not at all homogeneous. There are three types of stations, and the scale of production varies greatly accordingly. The best known stations, those whose programmes are occasionally seen in Europe, are those of the national commercial networks: the American Broadcasting Company (ABC), the Columbia Broadcasting System (CBS), and the National Broadcasting Company (NBC). While each of these large corporations may own a maximum of seven separate stations, the major production efforts go on in the California or New York studios of each.

Of the 518 commercial stations in America, the great majority are affiliated with one of the national networks and carry its programmes. Some of these do very little original production, and use the same studio backgrounds over and over, getting their visual variety from the programmes of national interest supplied to them by the networks. Other stations, which are not *network affiliates*, are known as *independent* stations, and rely heavily on syndicated recorded or filmed programmes.

2 Bourbon Street Beat, ABC

A naturalistic re-creation of typical New Orleans architecture. This setting, not a television studio set, is typical of the filmed dramas programmed by the ABC network which produces a number of programmes filmed especially for television.

3 Requiem for a Heavyweight, designer: Al Heschang, CBS

A naturalistic setting, with great emphasis on authentic detail. It establishes the mood and atmosphere of the run-down area of a large city, the environment with which the prize-fighter hero must contend. The "run-down" feeling of the scene reinforces the hero's failure.

The United States is unique, however, in the world television picture in possessing 48 non-commercial stations, often referred to as educational television stations (ETV). These ETV stations are not licensed to sell time or carry advertising, and rely for their financial support on public subscription, tax appropriations for educational purposes, and individual or corporate donations. Many are closely connected with educational institutions (universities, school systems, libraries, museums, etc.) and, as might be expected, much of their programming is generally educational or specifically instructional. They are linked through the National Educational Television and Radio Center (NETRC) into a network not connected by cable, but bound only by mutual interests and the exchange of programmes on film or television recording which are distributed to them by the Center.

A comparison of the production budget of a national network programme with that of an ETV programme would reveal the expected discrepancy. A network "spectacular" such as "Mayerling" may cost as much

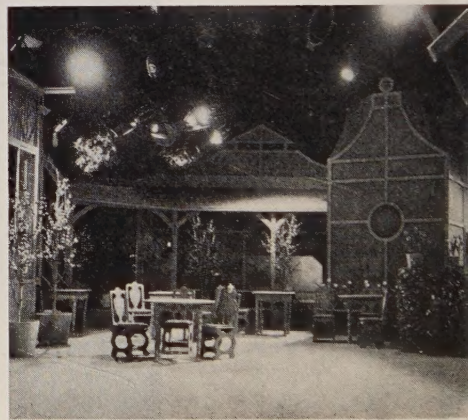
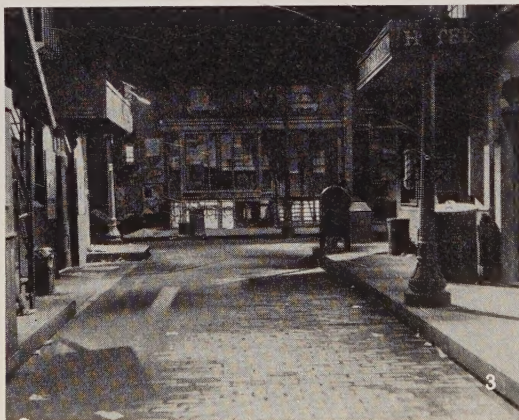
Playing areas are provided by the design on the upper boardwalk level, with several playing areas on the beach level.

8 The Second Man, designer: Richard Haman, CBS

A Court of Appeals, rich in its use of wooden surfaces, elaborate in its architectural detail. It achieves the impressive dignity of a high court.

9 The Gene Kelly Show (a 'special'), designer: Edgar Lansbury, CBS

This setting for a ballet-number from an hour-long variety programme featuring the great dancer, shows a recent use of scenic technique



4 and 5 The Red Mill, designer: Robert Tyler Lee, CBS

The charming village in which Victor Herbert's operetta takes place is re-created in a miniature setting. After establishing shots of the miniature, full scale action begins in the courtyard set. The romantic flavour and fairy-tale mood are captured by the picture-book buildings and the painted detail.

6 The Day Before Atlanta, designer: Richard Haman, CBS

Exact in its historical detail, this farmhouse exterior combines painted techniques with true architectural detail. The treatment of the lower windows and door makes possible good shots of both interior and exterior action.

7 Trip to Paradise, designer: William Craig Smith, CBS

A scene along the boardwalk of a beach resort. A feeling of space is accentuated by the forced perspective of the boardwalk lamps. Realistic detail is combined with atmospheric lighting to create a striking effect.

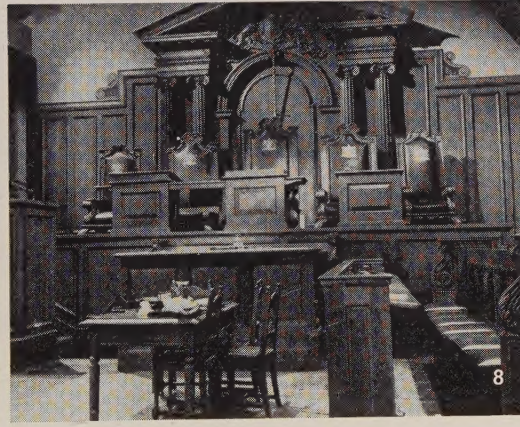
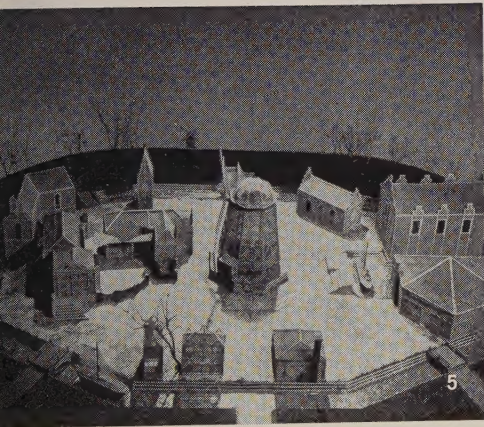
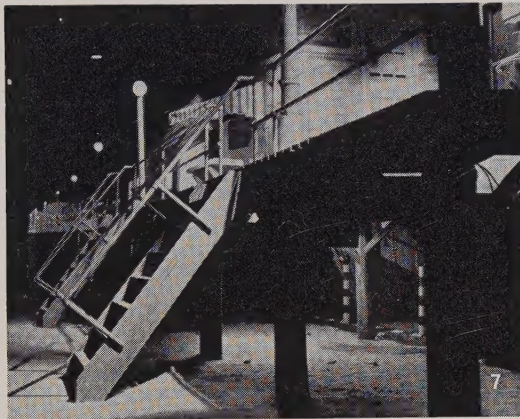
known in the United States as "Cameo Staging." This style, developed in 1948 by Albert McCleery, is the television equivalent of the theatre's 'space staging'. Essentially, "Cameo Staging" utilizes architectural and decorative detail against blackness to define space without enclosing it.

10 Dingaling Girl, designer: Richard Haman, CBS

The spacious feeling that suggests a mansion is accentuated by the ascending staircase, the tall arches and the second story windows behind a heavy carved railing. The ornate decorations, especially the impressive chandelier, continue the impression of luxury and wealth.

11 The Magic Well, KUON-TV, University of Nebraska

A setting for children's stories, which combines a stylistic tree with a picture-book well. The Story Lady and puppets entertain a visitor, the mythical Paul Bunyan, American folk hero. The gigantic wood-cutter is suggested by the monstrous boots and trouser legs—the child's imagination does the rest.



as \$250,000 for all material and personnel, but excluding airtime. The average recorded ETV programme, even one meant to be rebroadcast individually by each of the other educational stations, runs about \$2,000, with the top budget \$10,000 or from one-hundred-twenty-fifth to one-twenty-fifth the cost of a "special" commercial programme. Necessarily, available budget is reflected in production design; therefore this article will make no attempt to compare the two types but will include both in its considerations. Photographs or designs from the national commercial networks will be identified by the familiar initials, ABC, CBS or NBC.

The number of technical personnel involved in the designing and execution of studio productions must also vary with the financial structure of a station. On the commercial network level we may find an Art Director in charge of the design work at each of the production centres of a given network. Under him will be scenic designers, and scenic artists; carpenters, set dressers, property and furniture people; make-up artists and hair stylists; costume designers and wardrobe personnel; graphic designers, title artists, photographers and printers; and appropriate clerical help.

On the other hand, at a well-staffed educational television station, the design and execution of all scenic and graphic elements may be vested in one man, possibly with a half-time assistant. A staff of four full-time people is the exception rather than the rule.

While the types of television programmes produced in the United States could be classified in a number of different ways, perhaps the following outline will provide

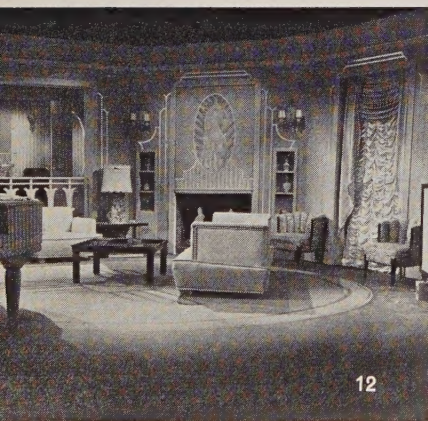
a brief orientation for those not familiar with the pattern of U. S. television. In commercial stations we find four general types. Under News and Public Affairs (approximately 10% of network programming) we include news, weather information, religious programmes, talks of all types, interviews with prominent national figures, special events, and network educational programmes.

Under Variety and Music Programmes (approximately 30% of network programming) we include variety, opera, musical comedy and operetta, quiz, audience participation and panel, dance, and non-dramatic "specials" usually built around a single dancing or singing star.

Under Drama (approximately 55%) we include drama written for television and either produced live or recorded by TV methods (kinescope or video tape recording); drama filmed expressly for showing on television stations; films, originally produced to be shown in motion picture theatres, but now released for showing on television. While the 55% mentioned above includes all three types, for the purposes of this article we have limited ourselves to the design and production techniques involved in the live or television recording group. It should be noted, however, that *live* drama will comprise 5%, at most, of the dramatic offerings of the networks in the current season.

The Sports category (approximately 5%) is produced almost entirely at the scene of the sport, and thus does not affect design materially, although it has its own special production problems.

Educational stations occasionally produce dramas, operas, ballets, and orchestral programmes, but their



12

12 **Seven Against the Wall**, designer: Al Hescong, CBS
A living-room design of extreme sophistication. The emphasis on smartness and wealth establishes a mood at once, and the furniture groupings make possible a wide variety of camera angles.



13

13 **Story Lady**, KUON-TV, University of Nebraska
Actors in silhouette perform in pantomime, while the Story Lady



spins her tale. Three-dimensional properties and cardboard cut-outs are combined to provide a simple but effective setting, appropriate to the shadow actors.

14 **Lawman**, ABC

Another example of naturalism of setting, this of a saloon in the American West in the nineteenth century. This photograph is atypical of the illustrations in this article because it is again of a filmed series.

2. studio background



1 **Social Science**, designer: ▶
Jack Dunlevy, WMSB, Michigan
State University.

An educational programme for adults, on modern history and sociology, is set in a functional television classroom. It includes three basic areas: Chalkboard on the left, World Map on the right, and a Desk Area for the instructor in the centre.

principal efforts are directed toward educational and informational programming.

In short, trends in design are influenced by such factors as the type of programme for which the set is planned and its intended audience; whether the setting is to be used only once or for a continuing series; whether the programme is supported by a commercial sponsor or produced at the expense of the station or network (a *sustaining* programme). None of the above dictates the style of the design, which may be realistic or abstract, for example; each programme or series is produced in the style which will provide the best visual support.

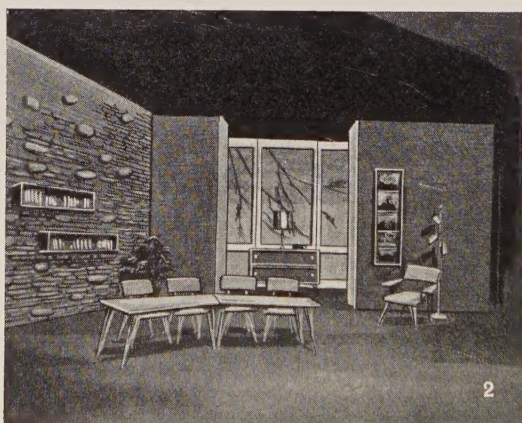
The more familiar types of design are those used in drama, opera, and ballet. These may be realistic, stylized, or abstract. (In the United States, truly abstract design is rare indeed, except in elaborate music-variety programmes which may mount an individual song number in this style.)

Less familiar, and less indebted to design for the theatre, is the type of production used in the other kinds of programming. Non-dramatic programmes are much more likely to use the same setting week after week. Following Mr. Levin's ¹ excellent lead, we shall refer to those sets which do not pretend to be a room or a place, but are frankly set in a television studio, as "studio backgrounds". These need not be bare or dull; they are usually attractive and carefully designed to make possible and convenient those camera shots which the particular continuing series uses again and again.

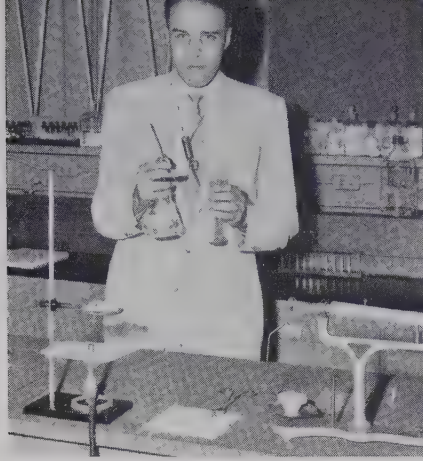
In considering this non-dramatic category of design, it may be more profitable to classify our production styles not as *realistic*, *stylized* or *abstract*, but as *realistic*, *decorative* or *functional*. Although one feeling pre-

dominates, in most designs, elements of all three may exist in a single setting. For example, in one long-running panel programme, the furniture is realistic, the wall surfaces are treated purely as decoration, and the arrangement of platforms and steps of varied heights is purely functional, and designed in terms of camera angles and subject movement.

The writers have not been able to identify a single philosophy of design and production in United States television. To begin with, there are the obvious differences between the commercial network stations at which most of live television originates, and the independent commercial and the educational stations. Even if we concentrate on the national network level, however, it is hard to discern a common approach to the assignment of designers to programmes, for example. Mr. Levin, in the 58 B issue of the *EBU Review*, described the BBC policy of encouraging or developing specialists who have talents related to the particular kind of programme to which they are assigned. Mr. Polloni, on the other hand, in the 62 B issue speaks with equal eloquence and justification of an emphasis laid not so



¹ *EBU Review* No. 58 B, November 1959.



2 You Wanted to Know, designer: Jack Dunlevy, WMSB, Michigan State University

Sketch for a background for a question-and-answer type of programme which features a panel of university professors. The designer has struck a modern tone, unobtrusive but pleasing. An appropriate realistic setting for a programme which combines entertainment and information.

3 A Gallery of Modern Art and Its Sources, designed for the television division of the Walter Reed Army Medical Center, Washington, D.C.

This programme was produced in colour for simultaneous transmission to 80,000 public school children. Designed in a setting both functional and realistic, the programme used many contemporary paintings from the Phillips Gallery of Art, including works by Klee, Picasso, Mondrian, Okada, Graves, Dove and Soulage. It indicated source links with "old master" paintings from the same collection.

4 Western World Literature, designed for KUHT, University of Houston

An imaginative backdrop of giant books, painted in forced perspective, provides a decorative studio background for the presentation of discussions of great literature. The specially designed unit of furniture is bench, desk, display table and book-case, all in one.

5 and 6 The Magic Path, designed for University of Michigan Television

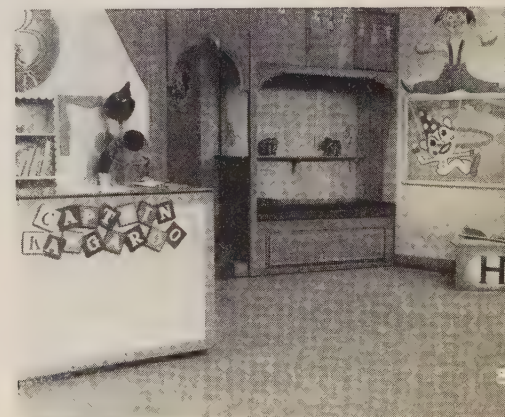
A continuing background for a series of children's story programmes. The miniature was used as the opening identification of each programme, getting the child viewer into the proper mood as the camera wandered up the path to the old hollow tree. Then a 'matched dissolve' to the full-scale tree brought us to the story teller, who was assisted by a racoon and a butterfly.

7 College Chemistry, designed for the University of Texas

A purely functional and realistic background for a closed circuit course in chemistry. This televised instruction permits simultaneous teaching of several hundred students in different classrooms located about the university campus. Only a slight attempt at decoration has been made; the emphasis is on the instructor and his apparatus.

8 Captain Kangaroo, designed for CBS

One of the standard settings for a popular daily programme for children. The setting provides numerous nooks and crannies, secret drawers and panels, appropriate hiding places for the surprises which the good Captain produces for the delight of his young viewers. Toy motifs in the decoration, a picture-book style of painting, and ample playing areas.



much on the out-and-out specialization of the designer for a single type of programme, but rather on each designer's cultivating a particular style.

Network design departments in this country encompass both types of designers, probably with a greater proportion of generalists than specialists. On the educational or independent station level, of course, only the generalist can meet the many and varied demands which are made upon him.

While it is true, as Mr. Levin pointed out in his article, that a man assigned to design studio backgrounds can handle more programmes than one assigned to a drama, good design is an important factor in the success of both types of programme. While a dramatic series or an individual drama will require more research, more development of detail, more investment of time than a quiz, audience participation, or panel type of programme, the latter type still demands ingenuity and good design sense, if the setting is not to lose its initial attractiveness from continuing exposure, week after week. Moreover, a studio background for a non-dramatic programme may require even more awareness of the demands of television if the setting is to meet the needs of the director (called the *producer* in England and Canada). The same problem of repeated exposure holds true for situation comedies, westerns and crime dramas, but these are no longer produced live, and therefore are not included in our considerations.

Network designers in the United States must contend with another factor which is not present in European television. This is the influence of the advertiser or his agency on all aspects of production. A production team is assigned to a given series and will include a designer who will do the first programme and then may or may not continue with that series. Since the advertiser is paying all production costs, he and his representatives may often influence the choice of members of the production team, and their tastes may dictate the types and styles of the visual elements of the programme (as well as others). Nevertheless, it often happens that a designer stays with a given series for many months, for the entire season (usually thought of as September to May or June), and even for several consecutive seasons.

Television graphic design plays an important part in television in the United States as it does everywhere. For purposes of this discussion, we should like to divide graphics into two types: identificational and informational.

Identificational designs include programme or series titles, credits, advertiser identification, and station or network identification. These are commonly called title cards, although quite often transmitted via the film chain rather than via a studio camera. Quite often the lettering of these title cards is superimposed over a suitable background. While superimposed lettering is obviously merely white on black, the selection of style of lettering, the placement, the relation of lettering to back-

ground, and the design of background all pose interesting problems. The importance of graphic design is indicated by the fact that on the network level a separate department is devoted to the design and production of this type of material.

Informational graphics convey more than recognition of a familiar series or advertiser, or the name of a drama and its author. Such materials as graphs, charts and maps, whether still or semi-animated, are necessary components of the programme's content and may, for brief periods of time, provide the principal content as well as visual support.

While identificational or title art almost always fills the screen and exists in a different realm of reality from that of the studio action, informational art more often appears in the studio along with the performer or presenter. It is seen beside him, or is used by him, changed by him, or pointed to by him. It may reinforce what he is saying, or may be used to clarify or explain what he is saying. It becomes to the non-dramatic television performer what hand properties are to the dramatic actor.

As might be expected, the most extensive use of informational graphics is made on the public service programmes of the commercial networks and on most of the programmes of the educational stations. Over the years many varied techniques have been developed to provide information consecutively and gradually, in contrast with the older forms which simply showed all the information at once. Items may be revealed, or added or changed, readily and quickly before the camera on a well conceived and executed informational graphic.

The accumulative factor is an important consideration in the design of graphics, especially on the educational television programme. May we pose a problem, and then illustrate with one possible solution. The content of our hypothetical programme includes reference to the Western hemisphere and certain land areas which can best be shown by use of a map. The desire then is to break the hemispheric area into latitudinal divisions corresponding to the climatic zones (arctic, temperate, tropical, sub-tropical). This is the content problem; here is one possible solution to this problem of visualizing this concept.

A device is constructed which consists of four horizontal panels whose dimensions, when combined, form a flat surface area sufficient to contain the map and any other necessary information to depict the Western hemisphere. The four panels are mounted inside a frame on horizontal pivotal points centred on each panel, so that each panel can be individually manipulated to reveal its reverse side. The performer has then only to rotate each panel to bring into view the reverse of each hemispheric section on which the climatic zone and an appropriate symbolic sketch are executed. (See photograph 5. 4.)

3. stylized

1 **A Time to Dance,** ▶
Setting for "Three Parades
for the Lord", designer:
Jac Venza, for WGBH and
NETRC

One of the programmes from an
educational series on the art
of dance. The expression of
religious fervour through dance
is intensified by the skeletal
framework which creates the
austerity of the northeastern
section of the United States.
The converging patterns of
both walls and floor focus our
attention on the invisible altar.



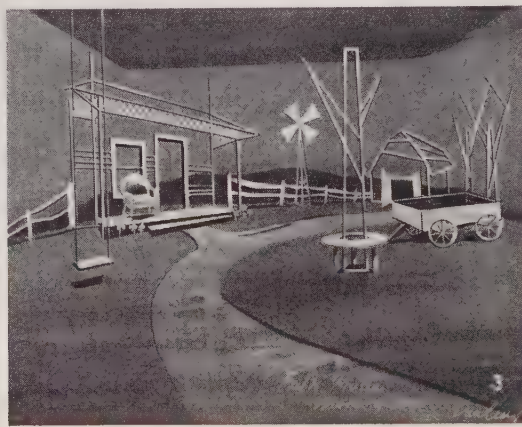
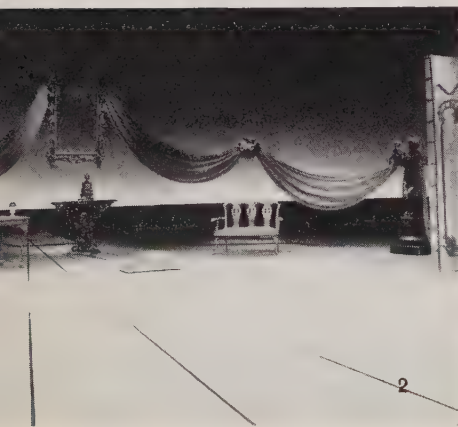
Another popular device is the use of superimposed lettering to provide information which does not have to accumulate. For example, if a graph is on the screen, the high points of the graph may be identified one by one as white letters appear just above each point and then disappear as the television instructor moves on to the next high point. Another technique is to superimpose a *moving* white dot, manipulated by the performer, over such a graphic as a map, for example. This permits the performer to direct the viewer's attention to any specific point or area of the map which he is describing, yet makes it possible for the performer to shift attention easily to another area.

The simple and effective method used to achieve this result is that of providing the performer with a thin black rod to the tip of which a flat white disc or an arrow-shaped point has been attached. The performer moves the disc or arrow about in front of a black card or other black surface, while watching a television screen on the

In educational stations, particularly, considerable ingenuity is expended to effect two economies: economy of cost, and economy of effort by the performer. Hours spent in the design and construction of the graphic device may save precious minutes of air time as the programme is presented.

In the opinion of the authors, graphic materials are most effective when operated by the performer himself, since this achieves a better integration of the graphic into the programme content.

Another approach to the visualization of information is the use of images which are projected on a translucent screen. This device is called, in United States television, *rear screen projection*; in film work, it is more often known as use of a *process screen*, and sequences which use it are called *process shots*. These screens come in sizes which range from that of a typical graphic card (less than a yard) to 9×12 or 15×20 feet. The larger screens are more often used for the projection of



studio floor on which there appears the superimposed product of the two cameras.

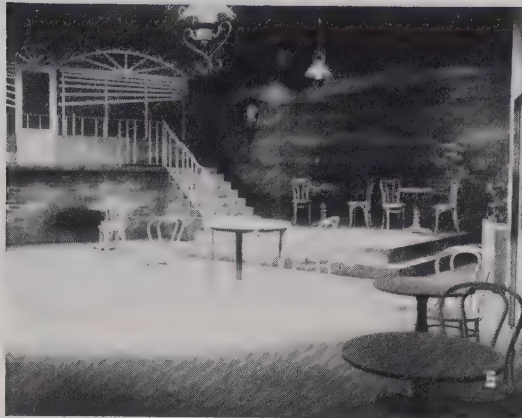
Another type of manipulation by the instructor or performer which is found extensively on educational television stations is that in which he operates the moving parts of such a device as the piston in the cylinder of an automobile engine, the articulation of the bones in the human arm, or the flow of blood through the chambers of the heart. All of this is achieved by well conceived, executed and manipulated two-dimensional graphic devices.

In short, informational materials may be designed to be pushed, pulled, rotated, flipped, revealed or concealed, extended, contracted or manipulated in any number of ways. New methods of visualizing information are constantly sought for, to maintain the viewer's interest in the material being presented, and to make *visual* those concepts and facts which are not innately so.

scenic backgrounds, and the slides which provide the images may be photographs of interiors or exteriors, or may be an artist's conception of abstract or stylized designs.

The use of projected scenic backgrounds obviously brings us back to the category of settings rather than of graphic design. In commercial television, on the national network level, this approach to scenic design may be found in the programmes themselves, principally in drama and variety programmes, while the independent commercial station uses it almost exclusively as background for advertising messages.

Educational television stations, carrying no advertising messages, use rear screen projection in either of two ways: 1) as scenery, whether as the whole back wall of a set, or as the background seen through a window, attempting in either of the above to make the projection as illusionary as possible, or 2) as *obvious* projection,



2 The Gene Kelly Show, designer: Edgar Lansbury, CBS

The addition of lighting beyond the limits set by the scenic elements produces in this setting a stylization of design. The spatial feeling of the set and the large quantity of open floor space lend themselves admirably to choreography for the camera.

3 Folk Music, designer: Jack Dunlevy, WMSB, Michigan State University

A stylized design, using constructivist elements to suggest an American farmyard. The setting provides a simple but appropriate background for an educational series devoted to regional folk music of rural America.

4 A Time to Dance, designer: Jac Venza, for WGBH and NETRC

Natives of Trinidad dance joyously in front of stylized building fronts which reflect the intricate fretwork of Caribbean architecture. The dancing area is defined on the floor by an outline of the island of Trinidad and the surrounding water.

5 The Gene Kelly Show, designer: Edgar Lansbury, CBS

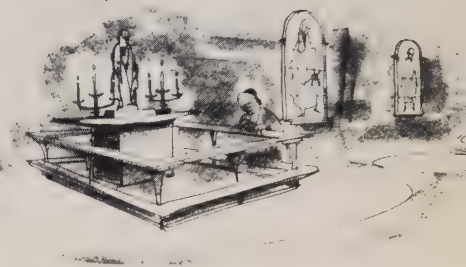
The Coffee House set for **The Coffee House Ballet**. Skilful painting on the solid scenic surfaces suggests the cellar and its murky, smoke-filled atmosphere. Decorative elements on the upper platform suggest the entranceway. Note the simple furniture, and a table capable of being danced upon.

6 The Catholic Hour: Visits to a Side Altar, designer: Robert Wightman, NBC

One of a regularly scheduled series of religious programmes provided by a national network as a public service to all major faiths. The designer's sketch shows a simple setting which captures the reverent atmosphere of a small church, using a minimum number of elements. Pools of light are an integral part of the design.

7 The Eternal Light: The Tall Spinster of Gimel, designer: Robert Wightman, NBC

For the Jewish portion of the network's religious service, we find here a square in the Jewish section of a small town in Middle Europe. The façades of familiar buildings, including the synagogue, help establish the special aura of this milieu, while groupings of simple but easily recognizable furniture provide varied playing areas.



for symbolic or informational purposes, with no attempt to conceal the use of projected images, and with dimensions that vary from miniature to twice life size. As an example of non-scenic projection, a programme called *Russia: Faces of a Giant* projected the images of actors in silhouette, combined with the hammer-and-sickle symbol, as both illustration and background for the speaker who was describing, in this instance, various types of Soviet citizens.

Another device, one that is used primarily for decorative purposes, rather than for conveying information, is that of projected light patterns. These may fall not upon a translucent screen but upon any background surface, solid or drape; they may suggest anything from Venetian blinds or prison bars to a purely decorative pattern of light and shade. An economical scenic device, this technique may be used as a principal decorative element in an educational programme with a low budget, or as a complementary element in a more elaborate production on the network level. Those designers who like to use it claim for it the advantage of economy of time as well as cost. While the technique is undoubtedly world-wide in its application, it is mentioned here to show that it is utilized for both the high and the low budget programme.

These two variations on more standard methods of production design employ mechanical or optical devices. A third variation is that of introducing scenic or background elements by electronic means. In colour television, for example, an electronic device called "Chromakey" makes it possible to "insert" the image of the performer, being taken by one camera, into the scenic background being taken by another. The source of the background may be a full-scale studio setting, a coloured photograph or a painting of considerably less than life size, or even motion picture film.

In black and white television the same result is accomplished, not quite as effectively, by the "special effects amplifier" which also provides split screens and "wipes" in a great variety of patterns. (One manufacturer of such a mechanism claims that over 150 different effects or patterns are possible with his model.) The use of such a mechanism for "inserting" the image of a performer into a scene being taken by another camera is called "self-key" in the United States; the authors have not been able to learn the name by which it is known in European television, nor the frequency of its use.

There are many local modifications of special devices such as these, but we have listed those which seem to us typical, as well as national, in their application.

We have described these devices in some detail not because we consider them unique or even unusual, but because we deem them important in our consideration of the design of settings and graphics. It has been interesting and amusing to note, historically, that as

new developments or production devices are perfected, they are very widely used at first. (These "new" developments are new in United States television, which itself is young compared to British television.) After a device has been in general use for a time, its novelty wears off and it is more likely to be used only when it can make a unique contribution to a design or production problem. When used judiciously, with taste and discretion, electronic devices can add a dimension of design beyond the scope of traditional scenic materials and techniques.

It may be that the alacrity with which such developments are seized upon by designers in the United States arises from the nature of television broadcasting in this country and the audience thus created. The multiplicity of channels (Los Angeles and New York City, for instance, each have seven) and the many hours of available programming (18 to 20 hours per day on most U. S. stations) have created an appetite which television is hard put to satisfy. The appetite of the television audience is omnivorous, yet easily jaded, and good visual variety, good pictorial design, creative imagination are all important in meeting and satisfying, without sating, this demand.

Variety programmes provide us with one example of the way in which the challenge is being met. Both regularly scheduled series of this type and the "specials" frequently use non-representational, almost entirely decorative, elements in their settings. Continuing visual interest is maintained not only by changes in lighting but also by complete scene changes carried out on camera, with no break in the tempo and with a continuous flow of performance.

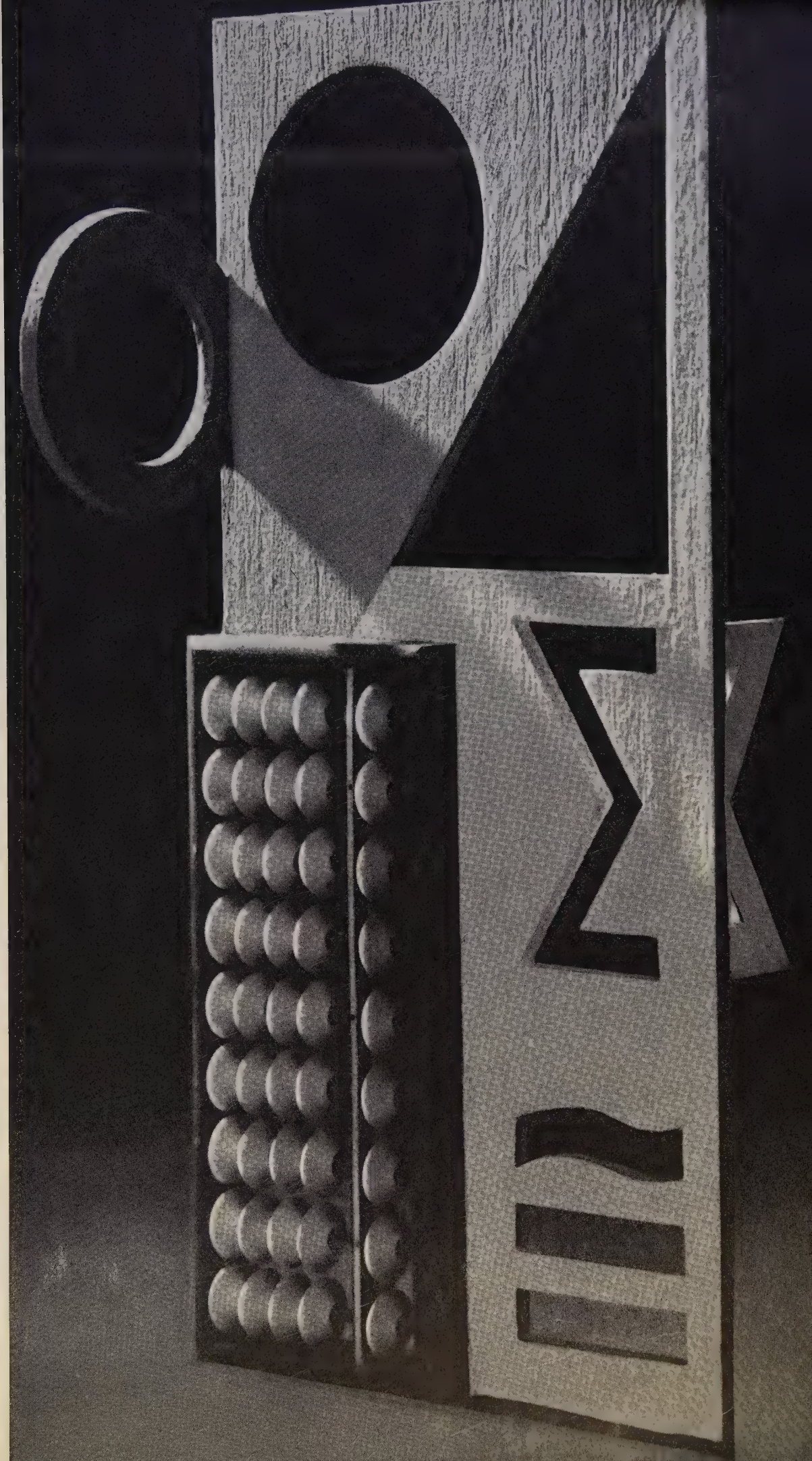
Little or no mention has been made of the special problems in design created by colour-casting and simultaneous transmission in compatible black and white. It may interest European readers to learn that for the current season only one network, NBC, will continue extensive activity in this area. The current season finds approximately twenty-eight hours per week of colour programmes being transmitted by stations of the National Broadcasting Company's network. Nevertheless, experimentation is not the province of NBC alone, and new applications of colour-casting and colour recording to both entertainment and information programmes continue.

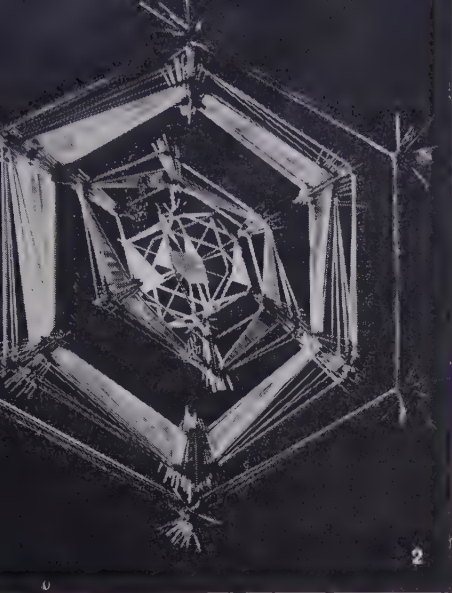
It is perhaps belabouring the obvious to say yet again that television is a visual medium, and that design cannot be confined to backgrounds. It is more than a mounting for content; it is an integral part of the communication, whether transmitting entertainment or information. We concur with Messrs. Levin and Polloni in their emphasis on the importance of the designer to the production team, and on the present-day acceptance and recognition of his contribution to any successful television presentation.

4. abstract

1 Continental Classroom, ▶ designer: Jay Moss, NBC

A three-dimensional signature for a nation-wide educational series broadcast at 6:30 in the morning, at which hour thousands of Americans get up to watch it. The symbol includes geometric forms, an abacus, and various symbols. Positive and negative areas combine with the texture of the wood and the surfaces of the abacus markers to create a play of light and shadow as the symbol turns.





2 Kaleidoscope, designers : Guy Fraumeni and Trew Hocker, NBC

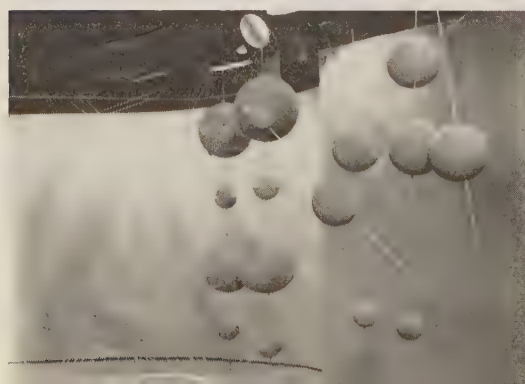
A three-dimensional mobile, used as the symbol which identifies a programme of many and varied elements. A framework of rods, laced with fibres and slips of transparent materials, rotates in space.

3 and 5 Portrait of a Composer, designer : U. J. Moffatt, University of Michigan Television

Two photographs which show the same abstract setting under different lighting conditions. Circular platforms for the musicians also provided decorative elements and variations in height, which make for interesting camera angles. The setting was designed to make possible many varied and effective changes in lighting, often integrated with the changes in mood or tempo of the music.

4 The Fourth Force, designed for the TV division of the Walter Reed Army Medical Center

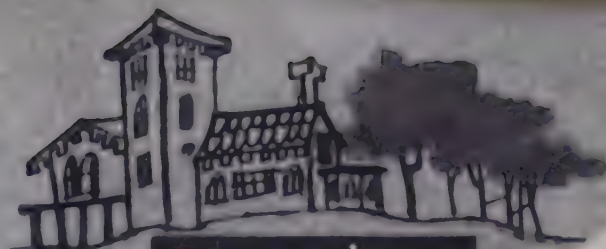
A programme on modern physics for school children. The setting used white wool for decoration, but the strings symbolized the collision of high speed nuclear particles. Rotating styrofoam models were used to represent the experiment which resulted in the overthrow of the law of conservation of parity in the weak interactions for which Drs. Yang and Lee were awarded the 1957-58 Nobel Prize in Physics.



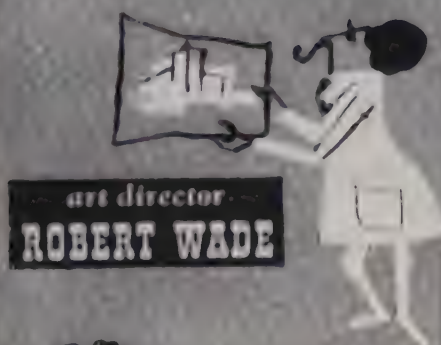
5. graphic design

O. HENRY'S THE RANSOM OF RED CHIEF

adapted for television by
PHIL REISMAN JR.



starred
WILLIAM BENDIX
as
BILL DRISCOLL

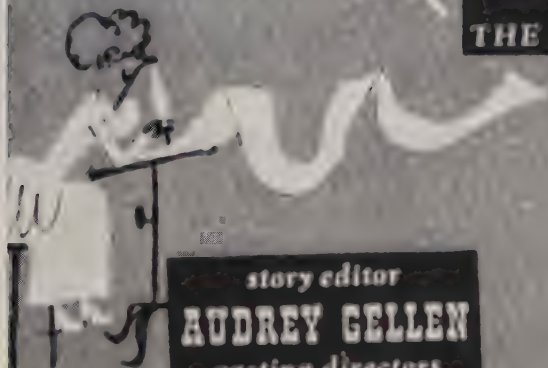
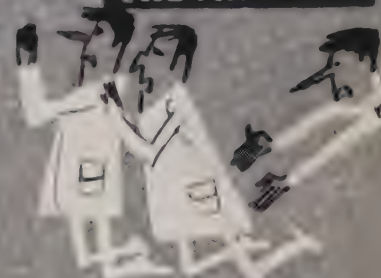


art director
ROBERT WADE



PHIL KRAMER
as
THE CONDUCTOR

JOE BOLEY
as
THE MINISTER



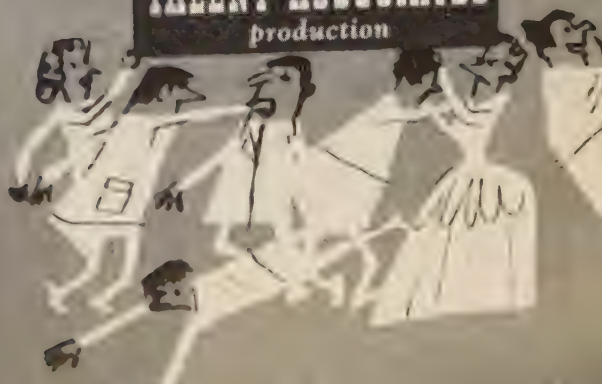
story editor
AUDREY GELLEN
casting directors
LIAM DUNN
PAYE LEE

associate director
VIRGINIA DUNNING
assistant to director
MAUREEN HESSELROTH
unit manager
RICHARD R. SWICKER



costume
JOHN
ma
BOB O'B

this has been a
TALENT ASSOCIATES
production

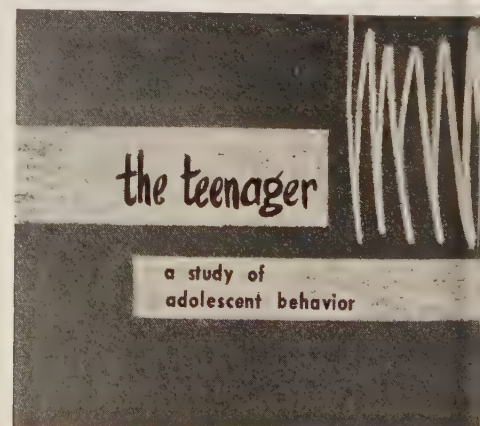
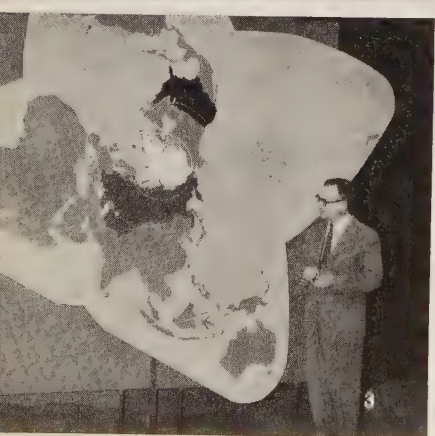
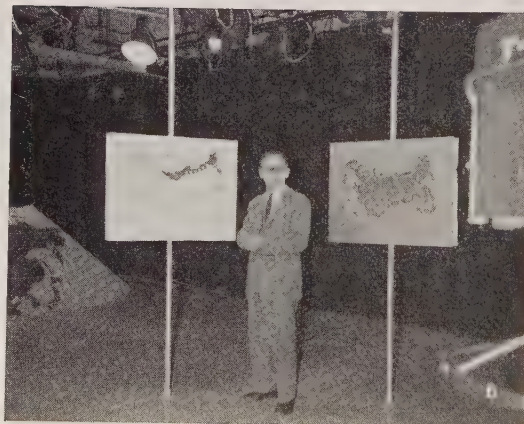
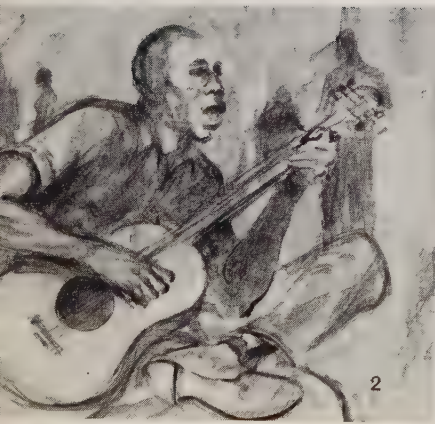
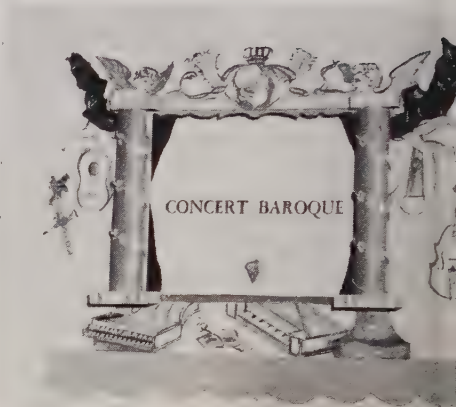


1 Ransom of Red Chief, closing credits, designer: Frank Aloise, NBC

The closing credits become a part of the entertainment and continue the hilarious mood of the body of the programme. They are also highly appropriate to the original short story by O. Henry on which the script was based.



5



2 Folk Song, designed for KUON, University of Nebraska

An illustration used in a music appreciation series at a university station.

3 Geography of Conflict, designers: Verne Weber and Tom Coates, University of Michigan Television

This is a design which combines the functions of a rotating informational graphic with those of a background element. The polar projection map is painted on a material which takes chalk readily, permitting the professor to draw or print appropriate information as if he were working on a blackboard.

4 From University of Michigan Television

5 Frontiers of Faith, designer: Stas Pyka, NBC

An illustration used within a programme on mental health, which was part of a religious series.

6 Russia: Faces of a Giant, designer: Tom Coates, University of Michigan Television

Another method of displaying graphic information is utilized here. Double-faced maps are mounted on telescoping metal tubing which contains internal springs which press down against the floor or up against an overhead beam. The instructor can rotate the map to reveal other information on the reverse surface. Other types are cylindrical or contain slotted frames which can hold a series of cards, revealed successively.

7 From the University of Texas

8 KUON, University of Nebraska

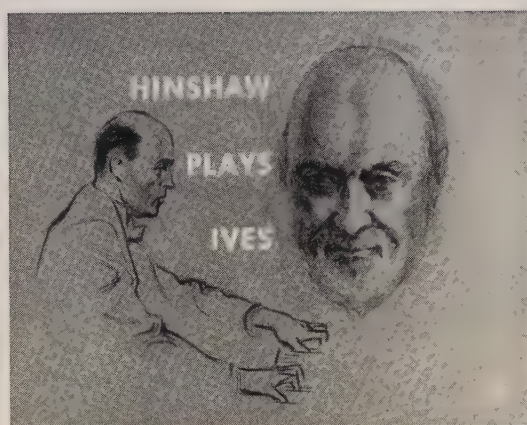
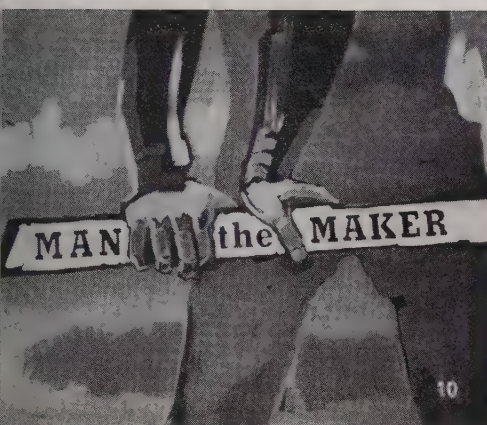
9 From University of Michigan Television

10 From University of Michigan Television

11 KUHT, University of Houston

12 KUON, University of Nebraska

13 From University of Michigan Television





Wild life broadcasting

Desmond Hawkins *

writes about the BBC's Natural History Unit

An interest in natural history and an affection for wild animals are important elements in what is generally understood to be the typically British 'character'. We are, or at least we like to consider ourselves to be, a nation of animal-lovers. Few British homes are complete without some loved specimen of cat, dog, budge-rigar, tropical fish or other more exotic pet: and while the adults tend the needs of these minor household gods, our children go through a series of infatuations for rabbits, white mice, hamsters, slow-worms, tortoises and goldfish. We look back with nostalgic respect to a long tradition in the eighteenth and nineteenth centuries of amiable eccentrics who spent their lives in the study of Nature, capturing and dissecting specimens, travelling far and wide to collect rarities, marvelling at the wonders and mysteries of the whole animal kingdom and seeking to understand its patterns and processes. Nowadays we are moved by the same spirit but in a different idiom; we furnish our suburban gardens with bird-baths and feedings gadgets of all kinds, we go in mass numbers at weekends to reservoirs and estuaries in order to make census-counts of ducks and geese, and almost every day sees the publication of a new book on some aspect of natural history.

In our more insular and enthusiastic moments we are prone to think that we are unique in all this—forgetting that the Scandinavian countries and the United States, to name only some examples, can show an equally lively popular interest in wild life. Where we are perhaps unique, however, is in the realm of broadcasting. I believe that no broadcasting organisation—unless perhaps my good friends in Sveriges Radio contradict me—has as yet set up a complete programme production unit, with its own specialist staff and resources, on the lines of the BBC's Natural History Unit. For that reason it may be of general interest if I describe the Unit in some detail.

The Unit was founded officially in July, 1957. Its location at Bristol, the headquarters of the BBC's West Region, rather than in London or one of the other Regions, was largely due to the fact that Bristol had already acquired an unofficial status for this type of

production. As far back as 1946 I had undertaken a series of three programmes, entitled *The Naturalist*, for the BBC's Home Service. The series was extended after the third broadcast and has maintained an unbroken run ever since. Today, fourteen years later, it has become something of a national habit among listeners. What is interesting in retrospect is that, in the immediately post-war period, we hit on a new trend in our audience. Animal subjects and natural history themes had of course had a place in broadcasting from the earliest days, but we had never made a regular and defined bid for the attention of naturalists as such. And in those post-war days—perhaps as a reaction from the circumstances of war—many of our listeners were choosing, as a hobby, to be leisure-time naturalists. By a further happy chance the perfection of mobile Sound-recording gave to broadcasting the exciting possibility of bringing into people's homes the very sound and atmosphere of wild inaccessible places, and in particular the songs and calls of birds. In Britain the pioneer of this work was Dr. Ludwig Koch, who had come to us as a refugee from Nazi Germany. Koch's wonderful collection of bird-recordings made him nationally famous and it was soon evident that *The Naturalist* programme alone could not satisfy popular demand. We launched a further series, *Bird Song of the Month*, followed later by *Birds in Britain* (which is also still enjoying an unbroken run). In this way Bristol came to establish its particular tradition within the BBC, which was formally and officially recognised in 1957.

The great expansion of television in the 'fifties was a wonderful opportunity for those of us who by then were specialising in wild-life programmes. To the sounds recorded by Ludwig Koch and others a decade earlier the camera now added vision. We were to be the first generation who could see and hear, in a single year, more than our naturalist ancestors had experienced in a lifetime. Moreover we had no problems of translation, of culture-barriers, of conflicting tastes: the flight of swans, to take an example, is eloquent in any language and all but universal in its appeal. We began to search for film, and yet more film, that would provide the programmes we wanted. Our needs were simple but exacting. We did not want pictures of startled and disturbed animals, nor of animals in captivity, nor of pets, nor of faked scenes showing untypical behaviour. We were not inter-

* Mr. Hawkins is Head of the BBC's West Regional Programmes

ested in presenting animals comically, whimsically, sentimentally or sensationallly. We wanted, and still want, film that would take us into the animal's natural world, faithfully and completely. Some of the film we used came from amateurs who filmed as a hobby at weekends and on holidays; some came from professional film-makers, and some from scientific expeditions and from research scientists who used the cine-camera as an instrument of study, as they might similarly use a microscope. Much of it had to be totally re-edited. Most of it was mute and we had to add our own track of natural sounds. Just occasionally we found a ready-made masterpiece. For example, at the XIth International Ornithological Congress, held in Switzerland in 1954, the films exhibited included one on the Black Woodpecker, made for the "Institut für Film und Bild" of Munich by Heinz Sielmann. Peter Scott, one of our leading British naturalists who was closely associated with me in our first attempt at television programmes, was present at the Congress where he was acting as BBC observer. He returned full of enthusiasm for Sielmann's work and we quickly arranged a showing of the woodpecker film. Its impact was truly remarkable. The programme had hardly ended before our telephone switchboard was jammed with calls from enthusiastic viewers. Wherever he went in England during the following days Sielmann was recognised and hailed as 'the woodpecker man', and I later saw hundreds of letters from England in his Munich flat.

In this way Munich became the first European connection of our Natural History Unit, and the close and friendly association between us has become the pattern for our later development of contacts in many lands with those who share our interest in wild-life subjects. Four years later I was able to visit the next International Ornithological Congress, which was held in Helsinki, and we there exhibited one of our own film programmes as an example of the work done in the field and in the studio by the Unit's own camera and production team. To emphasise the increasingly international character of our work we recorded in Helsinki a full-length programme for British listeners in which the speakers were Danish, Swedish, American, Icelandic, Italian, Finnish and Indian.

Between the Congress of 1954 and that of 1958 our television policy had become stable. We knew we could regularly hold a 'peak-hour' audience of eight or nine million viewers if the quality of our film were sufficiently strong and arresting. We had in Peter Scott a nationally popular figure to act as our permanent host on the screen and to talk on level terms with each individual expert—a Konrad Lorenz from Germany, perhaps, or a Roger Tory Peterson from the United States—who came to our studio to show his own film and comment on it. Our method of production was easy to define, though not so easy to achieve. We required our speakers to hold the interest and respect of those well-informed viewers who

might already know a good deal about the subject, and at the same time to communicate plainly and humanly with a mass-audience that would have little or no background knowledge. This is a problem of both vocabulary and manner, and it all too often defeats the expert lecturer! Film, in the form it reached us, was very seldom suitable for use without detailed re-editing and cutting. The wide-angle shot, which looks so well on a large screen, needs ruthless pruning. Television, when it shows us a wild-life scene, is always calling for the closer shot, the one step nearer, the intimate detail that eludes the naked eye of the observer in the field. Sound also was an important element in our method of production, and we found that very few makers of wild-life film took sound seriously enough—or even thought about it at all. Sielmann's woodpecker film confirmed my view that natural sound can give an added dramatic dimension to television. The sounds of Nature are wonderfully evocative and exciting. They tear away a veil from reality and sharpen the image of what our eyes show us. If I see on the screen a close-up of a bird opening its beak to call, and no sound comes, I reckon that moment as a failure: no matter how fine the picture, it is for me in some measure maimed and crippled. Background music, that cliché of the cinema, is no answer. We never use music in that way. Instead we build our own sound track, patiently and laboriously, laying a synchronous track to close-ups and using general background sounds elsewhere. Just as animation adds life to a still picture so I believe sound adds life to animation.

So much, then, for method. Let me turn now to organisation. I have referred to the establishment of the Natural History Unit in 1957: this entailed an expansion of staff and a widening of responsibilities. The Unit became the BBC's main source of natural history programmes in sound and vision, but not to the point of exclusiveness. In such a large and complex organisation a strict monopoly would have been unworkable, at any rate with so many-sided and indefinable a subject. Our Schools programmes have their own specialist staff;



Dr. Ludwig Koch, the pioneer of field recordings in Britain.



The Unit's producer-cameraman, Tony Soper, filming spiders with Peter Scott in the British Virgin Islands.

our Regions cater for their own audiences in a specialised way; and our various magazine-programmes range lightly over many topics that have a wild-life element in them. But, with those exceptions, any substantial programme dealing with wild animal life is handled by the Unit. As a consequence of this policy we took over control of the series made by Hans Hass and by Armand Denis. The Denis programmes come to us 'packaged' after advance discussion of subject and treatment. With Hans Hass the working partnership has been closer and recently much of his editing has been done in our cutting-rooms at Bristol. With both we have for some time had long-term exclusive agreements.

In charge of the Unit is a senior producer who must be able to command the respect of the scientific world since he is immediately responsible for the policy and content of our programmes. This post is currently held by Dr. Bruce Campbell who came to us from the secretaryship of the British Trust for Ornithology. Working with him are three producers whose output ranges from a monthly television programme for children to a specialised bulletin for experts in the BBC's Network Three. In support the Unit has two fully equipped cutting-rooms and libraries of film and sound-recordings. The libraries supply not only the Unit's needs but the requirements of all BBC departments. For example a drama producer may need a background recording of the sound of the Malayan jungle at a particular season of the year, to give authenticity to the action of a play; or a light entertainment producer may want a few feet of film showing penguins, as a comic effect; or a Schools programme may want sequences showing European frogs and toads. Requests of this kind come to the Librarian at Bristol as a normal part of his work.

The sound library is founded on Ludwig Koch's collection of recordings, which the BBC bought in its entirety in 1948. It has since been augmented by the BBC's own recording staff and by purchase or exchange

arrangements with other broadcasting organisations and with the increasing number of free-lances who now operate their own tape-recorders. We send our own specialised recording team on expeditions each year to acquire particular species that have not hitherto been represented in the library, and our catalogue—listing about 600 species of birds, mammals, reptiles, fish and insects—is the most comprehensive publication of its kind in the world. The film library consists partly of film held in our own vaults, and partly of card-index records analysing in detail film available to us but retained by its owner until we need to hire it for copying. About 750,000 feet of film are seen by the Unit each year: some is bought outright immediately, some is contracted for a limited number of showings, and the rest is card-indexed for future reference.

Inevitably we are as hungry for good wild-life film as any Television drama department is for new plays. The supply is precarious and unpredictable. From stern necessity we have developed a variety of methods for meeting our demand. Firstly we have our own producer-cameraman, who is also a qualified underwater diver. His work ranges from making short sequences, needed by existing programmes, to major expeditions to other countries and other continents. His first complete film, *Plapp*, has been shown in many Eurovision countries, and he has just returned from an expedition along the waterways of America, from New York to Florida. Next, we commission film-makers whose work is known to us as acceptable for television: this applies not only to established figures like Hans Hass and Armand Denis but also to less experienced people whom we have encouraged in the early stages with criticism and practical help. Wild-life filming makes special demands in time, in travel and in specialised knowledge; for those reasons it is often uneconomic for the professional film-maker. Birds, unlike actors, cannot be called to rehearsal at a particular time and place! Sometimes therefore the most

sensible course is to start by finding an expert naturalist who is going to spend many days and weeks in some remote location studying a particular species, and teach him how to use a camera, if he has the aptitude to do so.

Recently we have taken more positive and comprehensive measures to stimulate this kind of film-making in Britain, by direct association with the principal scientific and conservationist bodies. The Royal Society for the Protection of Birds has for several years had a small film-unit of its own and we have just concluded an agreement which gives us the use in television of this unit's output in return for financial backing. In 1958 there was a concerted move among leading British naturalists to form a national Council for Nature which would draw together the many county societies and specialist bodies that form what we call 'the Nature movement'. To help the formation of this national Council the BBC made a grant of £5000 a year for the first three years. The Council appointed a Films Officer to raise the standard of wild-life filming, and short courses are held in various parts of the country for the instruction of amateur cinematographers; at these courses members of the BBC Natural History Unit give lectures, and we are now preparing a demonstration film for use on such occasions. Last year the BBC and the Council for Nature jointly launched a film competition with £500 and a television contract as the first prize. We allowed a full year for the making of the films, and the results will shortly be announced.

These are some of the methods we are using to stimulate production, but we do not neglect the more obvious opportunity of acquiring films that have already been made and are available for television. Much of our time is spent in following up information about such films, with an increasing emphasis on international contacts. I recall with gratitude several successful programmes we have had from Sweden, Germany, France, Hungary and the United States. From Bristol our staff visit Europe and America fairly frequently. This year, for example, one member of the Unit was in Warsaw for the Congress of the International Union for the Conservation of Nature, another spent a week in New York viewing film and studying the resources of the National Audubon Society, a third has just returned from a special mission in Italy, while for some months Dr. Campbell was the guest of the Massachusetts Audu-

bon Society and worked on a research project with that Society. Similarly naturalists and broadcasters from many lands visit the Unit in Bristol, and from this general web of international contacts we try to extract the vital information of any new film-making or any advance in research that ought to find its place in our programmes.

What is even more important now is that we seek international alliances. I have already mentioned the economic difficulty of making good wild-life film. Those who have the time and the specialised knowledge to tackle a subject exhaustively often lack the funds to buy first-rate equipment or the artistry to use it well enough; and those who have the equipment and the cinematic skill can seldom spare the necessary time and probably have insufficient knowledge of the subject. This is a field that must be cultivated: left to itself, it will not produce very much of high quality. It is therefore part of the policy of our Natural History Unit to co-operate with similar broadcasting organisations. By a pooling of resources we increase our strength. Countries with programme budgets too small to undertake much original work might well avail themselves of the material already accumulated in the libraries of the BBC Natural History Unit. We are just beginning to explore that possibility in practical terms. Further, where an attractive project involves costs beyond the range of normal television budgeting, I am sure we must think increasingly of co-partnership. To give one example—I had for years wanted Sielmann to leave European subjects and embark on a full-scale expedition overseas to make a television series. To do this at his level of thoroughness, involving three cameramen on location for half a year, suggested a cost more appropriate to the cinema box-office than to television. Nevertheless Sielmann is now in the Galapagos Islands making just such a series as the result of a carefully planned partnership between the BBC Natural History Unit, the Munich Film Institute and Norddeutscher Rundfunk, Hamburg. This is the first time that wild-life filming on this scale has been initiated by a television alliance, but I am sure it will not be the last. Increasingly these naturalist programmes grow in their appeal to television audiences. The BBC Natural History Unit, though it is still a novel and developing element in the broadcasting world, already has a firm and recognised role. I hope it will soon have the opportunity to exchange ideas and programme material with similar units in other countries.



(Photopress Zürich)

Eurovision an obstacle race

by Marcel Bezençon, Director-General of the SSR
Chairman of the EBU Programme Committee

For some time now, there has been much talk about the speed at which history is being made and the difficulty which man is experiencing in keeping up with events that he himself has set in motion.

Eurovision might be taken to illustrate this fact. Six years ago, eight countries got together to create it, without believing in it very much. These countries were Belgium, Denmark, France, Germany (Federal Republic), Italy, the Netherlands, Switzerland and the United Kingdom. Almost a gathering of friends.

Mr. Imlay Watts and Mr. Stéphane Mallein puffed their way up the long winding stairs to the top of the belfry in Lille where there was a sort of temporary Eurovision control centre and work was carried on high among the clouds to the sound of the bells, almost as if the air-waves were being transformed into angels. We captured the rights to televise the world football championships live for 10,000 Swiss francs and set up links in the snow high in the mountains so that the viewer might not lose a single detail of the event on his screen. In those days queens passed by in their coaches, footballers tripped each other up, and horses jumped over hedges at race-meetings, after flying invisibly through the clouds at the speed of light.

Those were the days.

Now, the eight organisations of 1954 have been joined by those of Austria, Finland, Luxembourg, Monaco, Norway, Portugal, Spain, Sweden and Yugoslavia. The network has expanded to take in the Scandinavian countries in the north and is penetrating the Iberian peninsula. It has even been bold enough to pass through the Iron Curtain—without becoming a vehicle for political ideologies—to make the acquaintance of Inter-vision, a younger sister of another bed. Innumerable extra chairs have had to be provided for the meetings of the Programme Committee. Associate members join in, from the USA and elsewhere, and matters are dealt with off the record and behind the scenes, as if this were a world market for films, culture and current events.

At the same time, problems are growing more complicated. Nowadays it is impossible to kick a football or sing a note without having the financier, the expert and the jurist on the spot to check up and see whether the

shoe is fastened in accordance with the rules or the rights of high C have been carefully estimated. So much so that the members of the Programme Committee are often rather embarrassed at the extra work they involuntarily give to the Legal Committee and its perspicacious Chairman, Mr. Lenoble. And what would they do without the Technical Committee which Mr. Pawley presides over with that superb authority conferred upon the scientist by a language full of terminology that is incomprehensible to the layman? That probably explains why the technical reports carry the day at the meetings of the Administrative Council amidst an admiring silence. It's true that we make up for it when it comes to the question of engaging staff, and so the balance is restored.

Perched on top of its legal, programme and technical three-legged stool—resting in turn on the base formed by an Administrative Council under the vigorous chairmanship of Sir Ian Jacob—Eurovision looks down from its vantage point upon an ever-widening field of activity. At its most buoyant, it dreams of "Stratovision" as if the brief attempts at direct communication with the American continent were the start of a world tour.

This *penchant* for universality has not escaped the organisers of important events with whom Eurovision has to deal. Where we paid 10,000 Swiss francs six years ago, we are now paying a million and a half. And although we are happy to be able to offer sixty hours of entertainment broadcast direct from the stadia of the Rome Olympic Games, the financial departments of the television services, in their offices without sets, feel dizzy at the thought of the price to be paid.

As already mentioned, the expansion of Eurovision has sorely tried the members of the Programme Committee. Indeed, the agenda of the working parties and of the Committee continue to lengthen. Each item has its repercussions, whether they be technical, financial, cultural, sporting or even political. We have no alternative but to call in the specialists and the experts to swell the volume of the discussions. The study groups and sub-groups increase in number and questions are taken up again that have been dealt with elsewhere. They are gone into again at the plenary Committees, to be discussed once more at the Administrative Council and

appear again on occasion at the General Assembly. And the result of all this? Waste of time and dispersal of effort.

The structure of the Programme Committee was adequate for the needs of the years 1954-56, but the growing importance of Eurovision has rendered it out of date. The framework is bursting at the sides and it will have to be altered to fit the new conditions.

This reform is in progress and it is to be hoped that it will result in a more rational conception of the work.

Eurovision, as you know perhaps, lends its name to a multitude of activities. It is the live broadcasts that make most impact on the public, but there are also the film department, the staff training courses, the exchanges of ideas, the frequent friendly contacts between the television directors, the Prix Italia, the Cannes Prix, and the Eurovision Song Contest. It has often been a source of amazement that the latter does not always select the work whose choice will be confirmed by its subsequent popularity. However, it seems that the jury has made the right choice in 1960. The Swiss Shortwave Service carried out an enquiry in which the songs presented in London were submitted to the verdict of listeners in 32 countries in different continents. The song obtaining the most votes was "Tom Pillibi"—the work which carried off the prize in the Eurovision contest.

There are moralists who criticise the predominance of sporting events on the Eurovision network (approximately 60% of all relays).

Strictly speaking, we fail to understand the reason for all this gnashing of teeth. Isn't sport life at its best, a sort of heroic chronicle in universal language? At least for those who appreciate it. And when one sees the vast crowd of viewers that collect in front of their sets to watch, say, an important football match, it is difficult to see by what standards one could possibly put a stop to such live broadcasts. One even begins to wonder if sport does not do more to foster mutual understanding among the peoples of the world than international conferences.

Eurovision stands above all for the event, in all its instantaneity. Culture is better suited with the telefilm which often makes it possible to overcome the difficulty of a foreign language and allows for a certain amount of trimmings.

So let's not be too fastidious. The viewer is not a philosopher in an ivory tower. Give him what he wants whenever possible, as long as it is sane and healthy. Avoid serving up what radio can do better than television and don't think that Eurovision is increasing in stature when it makes a great show of providing entertainment whose tediousness dims the very pictures.

It has sometimes been asked whether it would not be to the advantage of Eurovision, which relays mainly events organised by third parties, to make a large part of its own programmes, as it does in the case of the Song Contest and on certain other occasions. There has been talk of a "Eurojournal" already. But why, for instance, would it not consider producing its own variety shows, cultural symposiums or sports competitions?

The idea has often been discussed and there has already been a number of productions which have not succeeded in convincing everybody.

In short, to be successful there would have to be a sort of European brains trust, in other words, a group of expert project designers, originators of ideas and influential promoters.

Perhaps we shall come to it one day. But for the moment, the task that Eurovision confers upon television directors, upon those in charge of the EBU's offices, Mr. Gilliéron, Mr. Hansen and Mr. Straschnov, and upon the innumerable commissions, groups, councils and committees that discuss the enterprise, gives them enough to worry about.

But Eurovision is quite unmoved by all these difficulties. It continues to grow, to develop and to expand, and as viewers' demands increase it becomes imperious, caring little for those who serve it.

How true it is that man is more than ever before the slave of his own inventions.

Eurovision programme statistics: key to abbreviations of names of organisations (see pages 26-27)

BBC — British Broadcasting Corporation (United Kingdom)
RTF — Radiodiffusion-Télévision Française (France)
CLT — Compagnie Luxembourgeoise de Télédiffusion — Radio-Télé-Luxembourg (Luxembourg)
RMC — Radio Monte-Carlo (Monaco)
RTB — Radiodiffusion-Télévision Belge (Belgium)
BRT — Belgische Radio en Televisie (Belgium)
NTS — Nederlandse Televisie Stichting (Netherlands)
ARD — Arbeitsgemeinschaft der Öffentlich-Rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (German Federal Republic)
ORF — Österreichische Rundfunk-GmbH (Austria)
DSR — Danmarks Radio (Denmark)

SRT — Sveriges Radio (Sweden)
NRK — Norsk Rikskringkasting (Norway)
YLE — Oy. Yleisradio Ab. (Finland)
SRG — Schweizerische Rundspruch-Gesellschaft (Switzerland)
RAI — Radiotelevisione Italiana (Italy)
ITA — Independent Television Authority (United Kingdom)
TVE — Dirección General de Radiodifusión y Televisión (Spain)
JRT — Jugoslovenska Radiodifuzija (Yugoslavia)
NBC — National Broadcasting Company, Inc. (USA)
ABC — American Broadcasting Company (USA)
OIRT — International Radio and Television Organisation (Prague)

EUROVISION PROGRAMME STATISTICS

Period 1st January - 30th June 1960

Organisations	BBC	RTF	CLT	RMC	RTB	BRT	NTS	ARD	ORF	DSR	SRT	NRK	YLE	SRG	RAI	ITA	TVE	JRT	NBC	ABC	OIRT	Total
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I. DURATION OF PROGRAMMES

Total hours of transmission (duration at the point of origin)																						182
Total hours of transmission by each organ. ..	74	96	36	26	123	102	79	95	57	56	51	36	23	81	82	10	5	3	3	2	17	1056

II. PARTICIPATION IN EXCHANGES

Number of trans.	74	76	47	20	150	125	99	87	26	48	49	28	21	71	96	18	—	—	3	2	20	1060
Percentage of all programmes offered	33	34	21	9	67	56	45	39	11	22	22	13	9	32	43	8	—	—	1	1	9	
Percentage progs. offered by other organisations..	40	54	21	9	73	57	46	42	12	22	23	13	9	33	47	8	—	—	1	1	9	

Period 6th June 1954 - 30th June 1960

I. ORIGIN OF PROGRAMMES

Period	BBC	RTF	CLT	RMC	RTB	BRT	NTS	ARD	ORF	DSR	SRT	NRK	YLE	SRG	RAI	ITA	TVE	JRT	OIRT	Spec. prog.	Total
A 6.6.54—31.12.54	9	6	—	—	2	2	4	10	—	1	—	—	—	15	6	—	—	—	—	—	55
B 1.1.55—30. 6.55	—	10	—	—	1	2	4	7	—	—	—	—	—	1	9	—	—	—	—	—	34
C 1.7.55—31.12.55	14	7	—	—	3	2	10	—	—	—	—	—	—	6	15	—	—	—	—	—	57
D 1.1.56—30. 6.56	16	16	1	5	5	3	5	19	1	—	—	—	—	9	63	—	—	—	—	—	143
E 1.7.56—31.12.56	22	34	—	3	—	8	18	3	8	—	—	—	—	5	6	—	—	—	—	—	107
F 1.1.57—30. 6.57	26	27	5	2	3	1	7	19	5	2	—	—	—	6	17	—	—	—	—	—	120
G 1.7.57—31.12.57	15	25	—	—	11	4	7	10	3	1	—	—	—	2	8	—	—	—	—	1	87
H 1.1.58—30. 6.58	15	16	1	—	5	4	6	8	19	—	13	—	—	5	9	—	—	—	—	—	101
I 1.7.58—31.12.58	17	40	—	1	2	4	4	7	4	2	2	—	—	2	17	—	—	—	—	—	102
J 1.1.59—30. 6.59	10	16	7	1	4	1	3	9	21	1	2	—	—	13	14	—	—	—	—	2	104
K 1.7.59—31.12.59	32	48	—	1	3	2	15	25	5	2	7	1	—	6	40	1	—	—	—	—	188
L 1.1.60—30. 6.60	39	81	—	2	17	4	6	16	14	4	7	—	—	4	17	—	3	3	5	—	222
Total	215	326	14	12	56	30	71	158	75	21	31	1	—	74	221	1	3	3	5	3	1320

II. PARTICIPATION IN EXCHANGES

Period	BBC	RTF	CLT	RMC	RTB	BRT	NTS	ARD	ORF	DSR	SRT	NRK	YLE	SRG	RAI	ITA	TVE	JRT	OIRT	Spec. prog.	Total orig.	Orig. + relays
A	45	44	—	—	45	46	45	45	—	215	—	—	—	37	36	—	—	—	—	—	46*	358
B	—	26	—	—	32	32	29	27	—	—	—	—	—	25	27	—	—	—	—	—	34	198
C	21	39	—	—	36	45	39	37	6	—	—	—	—	46	30	—	—	—	—	—	57	299
D	60	89	50	5	81	97	87	81	72	6	—	—	—	91	94	—	—	—	—	—	143	813
E	34	64	43	1	85	75	61	39	29	19	1	—	—	40	29	—	—	—	—	—	107	520
F	52	67	46	52	67	71	53	44	30	14	11	—	—	39	39	—	—	—	—	—	120	585
G	29	53	26	33	61	62	37	37	19	18	6	—	—	35	41	2	—	—	—	1	87	460
H	50	66	43	28	66	63	49	68	57	32	24	—	—	61	59	10	—	—	—	—	101	676
I	39	71	43	32	61	73	46	44	21	30	28	—	—	53	52	10	—	—	—	—	102	603
J	36	57	22	27	68	72	30	63	47	31	48	—	—	69	53	4	—	—	—	2	104	629
K	53	73	14	13	129	122	83	82	36	44	55	5	—	55	65	10	—	—	—	—	188	858
L	74	76	47	20	150	125	99	87	26	48	49	28	21	71	96	18	3	3	5	—	222	1060
	493	725	334	211	881	883	658	654	343	257	222	33	21	622	621	54	3	3	5	3	1320	7059

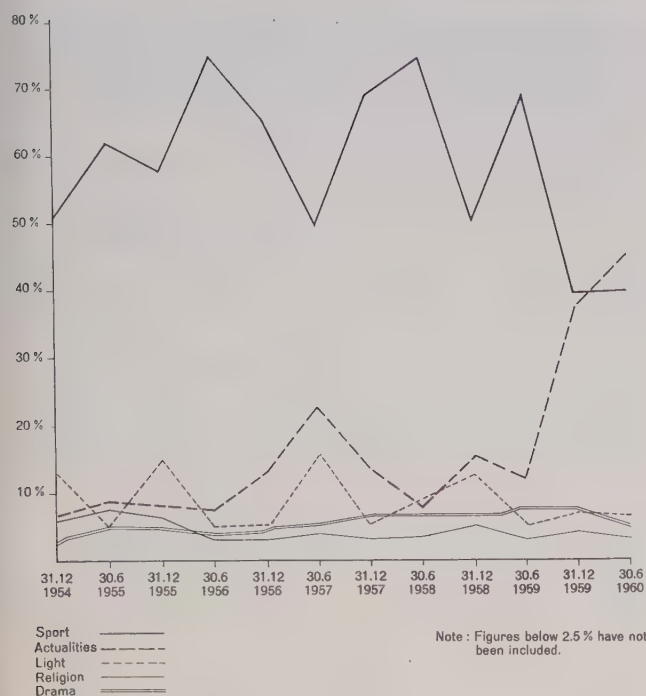
* Total number of transmissions during this period: 55

No information concerning participation for 9 transmissions (8.7.54—31.8.54)

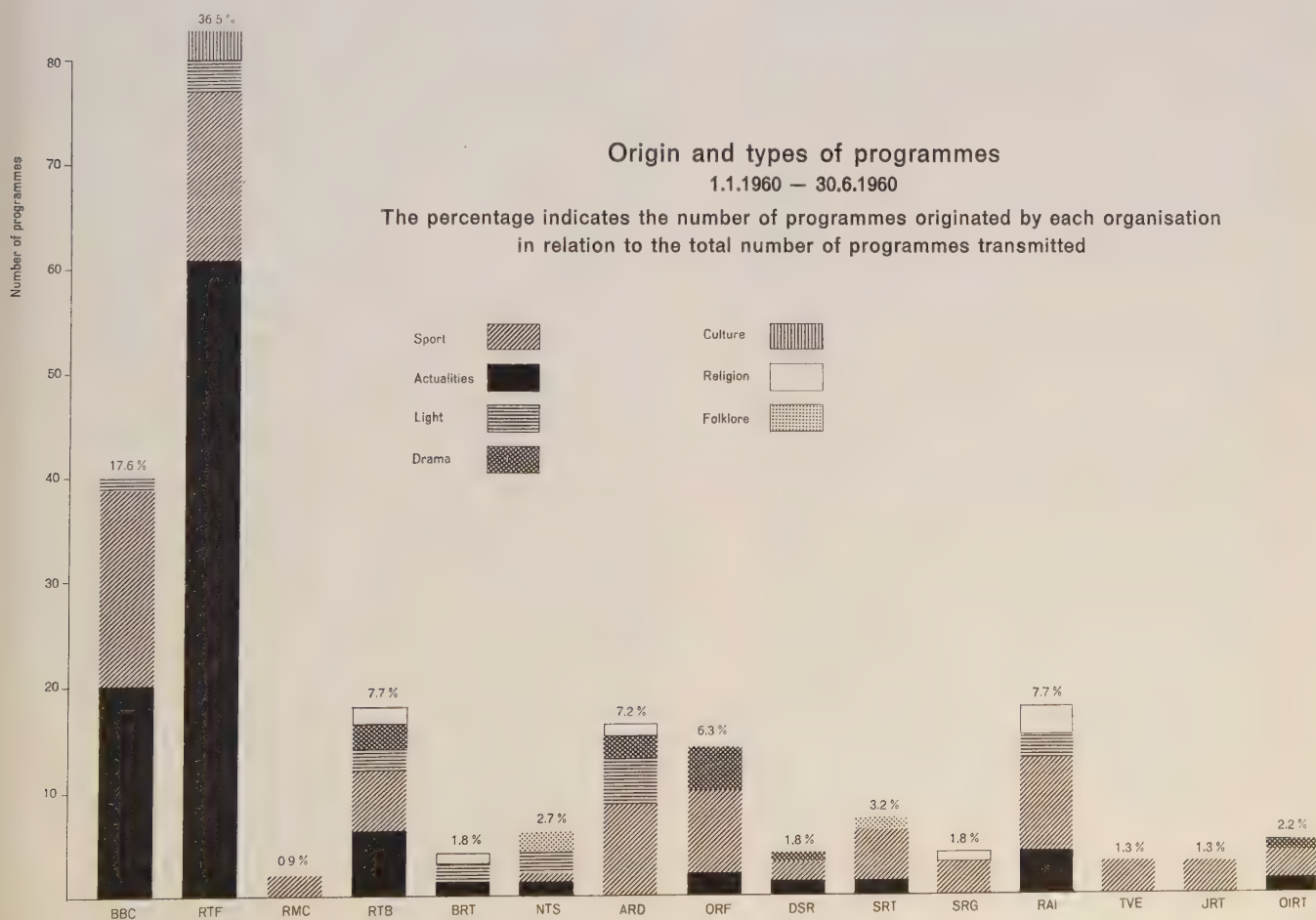
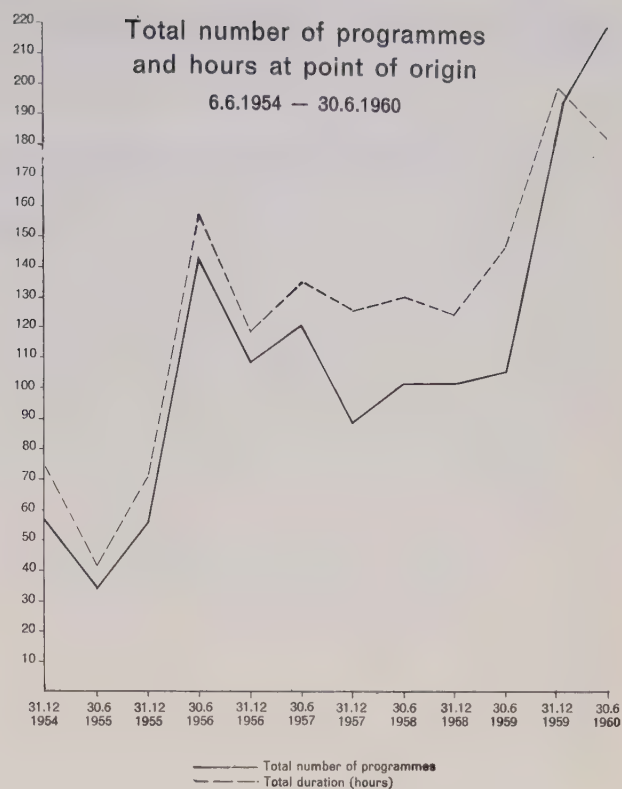
Average participation: 5.35

Key to abbreviations of names of television organisations on page 25

Types of programme 6.6.1954 — 30.6.1960



Total number of programmes and hours at point of origin 6.6.1954 — 30.6.1960



News and Information

PRIX ITALIA 1960

From 27th September to 12th October the XIIth Session of the Prix Italia for sound radio and television works was held in Trieste.

The countries taking part in the Prix this year numbered 23, namely: Australia, Austria, Belgium, Canada, France, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Morocco, the Netherlands, Poland, Portugal, Sweden, Switzerland, Union of South Africa, United States of America and Yugoslavia.

The entries submitted this year for **sound radio** were 15 in the category for musical compositions, 21 for literary or dramatic works with or without music and 13 documentaries. In all, therefore, 49 entries totalling 39 hours and 24 minutes.

The juries, after having completed the playback of the entries in the respective categories, made the following awards:

Prix Italia for musical compositions with words

Ondine — music by Akira Miyoshi, libretto by Eiko Kishida, submitted by the Nippon Hoso Kyokai

Radiotelevisione Italiana Prize for musical compositions with words

Electra — music by Henri Pousseur, libretto by Pierre Rhalys, submitted by Radiodiffusion-Télévision Belge

Prix Italia for literary and dramatic works with or without music

The Bersagliere's Sweetheart, by Edoardo Anton, submitted by the RAI Radiotelevisione Italiana

Radiotelevisione Italiana Prize for literary and dramatic works with or without music

Just a Man's Life, by Maurice Picard, submitted by the Société Suisse de Radiodiffusion et Télévision

Italian Press Association Prize for documentaries

Singing the Fishing, by Ewan MacColl and Charles Parker, submitted by the British Broadcasting Corporation

After the sound broadcasting juries had concluded their work, the jury for **television** took over. They had to examine 11 dramatic entries and 13 documentaries. The total was therefore 24 entries (a duration of 19 hours and 37 minutes) submitted by 13 out of the 16 countries taking part in the competition. The participants were Australia, Austria, Belgium, Canada, France, Germany, Great Britain, Italy, Japan, Luxembourg, the Netherlands, Poland, Sweden, Switzerland, United States of America and Yugoslavia.

After the playback of the entries the jury awarded the prizes as follows:

Prix Italia for a literary or dramatic television work

La Grande Bretèche, by Jacques Armand and Claude Barma, submitted by the Radiodiffusion-Télévision Française

Prix Italia for a television documentary

The Sicily of the Gattopardo, by Ugo Gregoretti, submitted by the RAI Radiotelevisione Italiana

Prize of the City of Trieste for a literary or dramatic work

Soldier, soldier..., by John Arden, submitted by the British Broadcasting Corporation

Prize of the Local Promotion Committee for a television documentary

Dawn over the Mountains, by Kenichi Koyama and Megumi Fujimura, submitted by the Nippon Hoso Kyokai

When all the juries had concluded their work the General Assembly of the Prix Italia met in plenary session. It approved certain amendments to the Statute recommended by the juries. According to an amendment to paragraph b) of Art. 18 concerning the activities of the juries, "decisions shall be taken by a majority of expressed votes". Another amendment was approved, to Art. 12, whereby the maximum duration of the entries is reduced from 85 to 60 minutes. The third amendment concerned paragraph a) of Art. 20 in which the words "two recordings in the original language" are replaced by "two recordings of the work" as in the case of musical entries. Another amendment to Art. 20 in the part concerning the musical entries, paragraph b), causes the words "at least two copies of the musical score" to be changed into "at least three copies of the musical score".

The General Assembly also requested the Secretariat to study the possibility of having a simultaneous playback for two categories of sound broadcasting entries in order to alleviate the task of the jurymen.

In discussing the work done by the television jury, the General Assembly approved the sending of entries also in the form of videotape recordings.

Another of the major points discussed by the General Assembly in connection with television was the possibility of rendering the Prix Italia for Television exactly similar to the Prix Italia for Sound Broadcasting. The Secretariat was given the task of preparing as rapidly as possible a draft Statute in cooperation with a restricted group.

Lastly the General Assembly heard a report from the representative of Unesco, Mr. Tor Gjesdal, Director of the Information Department, who submitted the plan of his Organization to award a special prize to be called "Orient-Occident Special Prize", within the framework of the "Prix Italia", to an entry which best illustrates the universal significance of Eastern and Western culture.

Maurizio PARDI

Monopoly in television broadcasting services and freedom of expression

Apropos of a judgment of the Italian Constitutional Court
by Paolo Greco
Titular Professor at Turin University

1. Readers of the *EBU Review* will already be aware, from the concise report which appeared in the September issue (No. 63 B), of the background against which the Italian Constitutional Court delivered its judgment of 13th July 1960, and of the various matters which were raised and decided in that judgment. It might therefore be as well, in the commentary on this judgment which I now propose to give, to address myself solely to the basic issue, the more so because it is one of particular interest in the international field as well as in Italy, especially for a possible study of comparative law on the legislation governing broadcasting services in the various countries.

It is a matter of record that in Italy certain legal provisions, notably sections 1 and 168 (5) of the Postal and Telecommunications Code of 1936, which in turn have their origin in earlier enactments (the Act of 30th June 1910 (No. 395) and the Act of 8th February 1923 (No. 1067)), give the State (among other things) a monopoly of all telecommunication services effectuated by means of electromagnetic or Hertzian waves, and specifically of "circular" (i.e. broadcast) radio-diffusion services, both sound and visual.

It is also generally known that pursuant to these laws—and incidentally by virtue of a well-nigh general principle in Italian public law—the State has the choice, in the case of a monopoly of activities that are in the nature of a business undertaking, of either operating the monopoly for its own account or farming it out through the medium of "administrative concessions", exclusive or otherwise, to public agencies or private firms or individuals. Up to now the State has always chosen the latter course in the case of broadcasting services, and at the present time the exclusive concession is vested in the RAI—Radiotelevisione Italiana, which is a joint stock company of the ordinary commercial type, except that it is subject to Government inspection and supervision, and except that a majority of the voting stock is held (and must continue to be held, as a condition of the concession) by a public agency, the IRI (Institute for Industrial Reconstruction).

Now, is this monopoly (and by way of consequence this exclusive concession), as it applies to television broadcasting, contrary to the principles laid down in the Italian Constitution of 1947? The question was put by two companies claiming the right to operate television services on their own account to two different judicial authorities, one to the Council of State and the other to the Examining Magistrate of the Milan Tribunal. The Courts, holding that the suits were "not manifestly groundless", referred the question to the Constitutional Court for decision, pursuant to Article 124 of the Constitution and section 1 of the Constitutional Act (No. 1) of 9th February 1948. The latter Court, however, found the State monopoly (and hence the exclusive concession in favour of the RAI) to be constitutional, though it also defined its purport and its scope.

2. Before proceeding to comment on this decision, I should make it quite clear that the issue of the constitutionality of the monopoly had been explored solely in relation to television broadcasting, and it remained confined to this field without extending to sound radio as well. In point of fact, one of the companies had installed some equipment and the other had requested the Government to allot transmission channels for the sole purpose of running television programmes, which was all that the objects of the companies were concerned with. Besides, the second company had, or rather thought it had, a good reason for differentiating between the treatment of sound radio and that of television broadcasting, and for keeping the two things separate. Its case was that since the law setting up the State monopoly referred only to *communications* by means of electromagnetic waves, it could not apply, even if it were valid, to *television shows*, which could not properly be termed telecommunications. This limitative construction, unwarranted by the facts, did not commend itself to the Council of State, but the latter could not go *ultra petitem*, i.e. overstep the limits of the suit, which was for a declaratory judgment that the monopoly of television, not sound radio, was unconstitutional. It follows that the present judgment of the Constitutional Court has the force of

res judicata only as regards the former. In strict law the question as it affects sound radio remains open, though whether it is still substantively open, i.e. whether the present decision constitutes a precedent that might cause a like solution to be adopted in the event of the sound radio monopoly being similarly haled before the Court, is a different matter. Before venturing a prediction on this matter, one must first see in what terms the issue was discussed and disposed of in relation to television.

3. The unconstitutionality of a State monopoly of television broadcasting services was portrayed in two different aspects and was measured against two separate sets of constitutional provisions, viz. Articles 41 to 43, which establish the principle of free private enterprise in business but also specify the exceptions thereto, i.e. the cases and circumstances in which private enterprise may be ruled out and "nationalisation" or "collectivisation" of business undertakings be permitted in its stead; and Articles 21 and 33, the first of which recognises the right of *everyone* to convey his opinions by *every* "means of diffusion", while the second proclaims that the arts and sciences and the teaching thereof are free.

The guiding line in the Court's decision is the relationship between these two sets of provisions and its attempt to dispel a kind of confusion, or, better, the vague but erroneous inkling that there is some relationship of cause and effect between them. The Court's approach is to make a clear distinction between the *administration* of television broadcasting services and their *use* for their ordained purpose of transmitting and receiving ideas and images. From this distinction the Court rightly infers the following corollaries: (a) that a monopoly of administration does not imply a monopoly of use in the sense referred to above; (b) that while the former may be held to be in accordance with the Constitution, the latter could not be so held; and (c) that therefore the two sets of provisions alleged to have been infringed each as a consequence of the other are instead self-sufficing and independent of one another.

4. As regards the first set of provisions, it is clear that the discussion on Article 41 could not be anything but academic. This article proclaims the freedom of private business enterprise, and Article 42 further buttresses it by recognising and guaranteeing the private ownership of economic assets, not excluding the means of production and *capital* in general. In so doing they establish an undoubtedly fundamental principle of those States which are founded on the system of liberal democracy in contradistinction to the collectivistic or communistic systems, otherwise called (ambiguously) the system of popular democracy. But this is a guiding principle and not a rigid and absolute rule. It has never been regarded as such, nor could it be at the present day and in present-day constitutions, where the principle of freedom goes hand-in-hand with the "social" principle which imposes on even those States most wedded to the

doctrines of political and economic liberalism broad responsibilities in the field of industry for the protection of the public interest and the common weal, permitting them, among other things, to take the place of private enterprise in certain conditions. In the Italian Constitution it is Article 43 which provides this possibility of substitution (in addition to Article 41 itself, which sanctions State intervention for purposes of planning), and hence it was essentially on this Article that the Constitutional Court's ruling was bound to, and in fact did, bear.

Article 43 is drafted in a rather complicated way, and abounds in expressions of restrictive force for the nationalisation of undertakings and for public monopolies in general. In this it differs from the corresponding ninth declaration in the Preamble to the French Constitution, which merely says that "*Tout bien, toute entreprise, dont l'exploitation a ou acquiert les caractères d'un service public national ou d'un monopole de fait doit devenir la propriété de la collectivité*". Article 43, on the other hand, after stipulating the *common* condition of "public purposes", permits private enterprise or initiative to be supplanted only if one or more of three conditions are fulfilled, viz. if the undertakings in question are (a) *essential* public services, (b) sources of energy, or (c) *de facto* monopolies—to which is added a further condition *common* to all three cases, namely that the undertakings in question are of *outstanding value to the community*.

This is not the place to subject the wording of Article 43 to critical scrutiny, to determine whether, how and to what extent the additional qualification of "essential" can be applied to a public service, whether it is humanly possible to distinguish between the more essential and the less essential *public* service, whether one is expected to perceive some difference (and if so, what) between the two conditions with which Article 43 begins and ends, i.e. the "public purposes" and the "outstanding value to the community", and whether, after all, it would not have been wiser on the part of the writers of the Italian Constitution to have adopted, like their French counterparts, some simpler form of words that would better sum up the conditions in which private business enterprise may be excluded.

Whatever the criticisms that Article 43 may merit, however, the Constitutional Court, in the presence of this article, necessarily had to specify whether the television broadcasting service met any of the conditions therein, and if so, which conditions. It had no difficulty in pronouncing it a public service. However difficult it might be to give a precise definition of a public service without leaving too wide a measure of discretion to the State and its authorities, certain of the characteristics commonly met with in such a service are found not only in television broadcasting but in sound radio as well, e.g. the growing public liking and need for television, the indivisibility of the service as compared with the mass of users, its subservience to ends that are of outstand-

ing value to the community (information, culture and entertainment) and to the State in particular, together with the desirability, not to say the need, of its being centrally organised and administered. But under Article 43, as we have seen, a further condition must be fulfilled—that it be “essential”; this is less easy to define, and was stoutly challenged by the appellant companies. The Court did not feel able to affirm that it was essential. The other hypothesis, that of the “source of energy”, was even more clearly to be ruled out. Electromagnetic waves are doubtless a form of power or energy, but they do not possess a natural source located in a given spot, like water power or mineral resources; rather do they require energy, apparatus and machinery to radiate them, but these are man-made instruments, as in the case of any other technical production process powered by natural forces, and it is certainly not in this sense that the expression “sources of energy” is to be construed.

The position is different with regard to the *de facto* monopolies which constitute the third alternative envisaged by Article 43. It should be said at the outset that this article does not appear to cover all the cases in which business activities may legitimately be reserved to, or in other words monopolised by, the State or other public agencies. In Italy as elsewhere such statutory State monopolies exist even where no *de facto* monopoly is found, i.e. in the place of what might otherwise be a situation of free competition. This is so for various reasons: fiscal reasons, to endow the State with revenue out of the excess profits of the monopoly that is to all intents and purposes in the nature of indirect taxation (e.g. the salt and tobacco monopolies in Italy); for social reasons, for the purpose of providing goods and/or services which private enterprise could not profitably furnish or extend throughout the land (the typical case being transport services), or goods or services which the State wishes to make easier to buy or use by charging “political” or “public” prices, i.e. lower than those which would obtain in a freely competitive system (below cost or at least at cost price, without any margin for trading profit). In all such cases State monopolies are commonly considered to be justified, and no one has ever hitherto impugned their constitutionality, even where they do not satisfy the other two conditions in Article 43 (*essential* public services and sources of energy).

The third hypothesis mentioned in this article refers solely to circumstances in which, without a legal State monopoly, a *de facto* monopoly in favour of private undertakings has arisen.

But what constitutes a *de facto* monopoly? The Constitutional Court rightly took the view that Article 43, in referring generally to monopolistic situations, could not have intended the word “monopoly” to be taken in a strictly literal meaning. The economists tell us that as a rule there is no such thing as free competition or *de facto* monopoly in the absolute, i.e. that there is

never a *perfect* instance of either. Such absoluteness is even less applicable to a logical interpretation of Article 43, which would have no *raison d'être* if it were not for the purpose of putting down the *privileged* situations in business which occur when one or two or a few individuals (in what are called monopoly, duopoly and oligopoly situations respectively) have managed to “corner” all the available goods or means of production which, on account of *inherent* limitations, are not accessible to the general public. The word “inherent” indicates that this does not refer to those normal limitations which have to do with intellectual or technical ability or the availability of funds, but rather to limitations of a material or physical nature. It is precisely these limitations which are encountered in the field of television broadcasting on the basis of an undeniable fact, so undeniable in fact that it could not be challenged in the action under review either by the parties or in the orders of the lower courts.

It is common knowledge that in order for a service of this nature to function properly, or in other words in order that the signals borne on Hertzian waves may be transmitted and received with the necessary sharpness and clarity, it is necessary to have the use of certain frequency bands (which are much wider for television than for sound radio), and of given wave channels within these bands. Under the international Conventions and Agreements from the Atlantic City Convention onwards, Europe is allotted a small number of bands and Italy is assigned a limited number of channels in each of the bands (31 in all). With this number, having regard to the particularly mountainous characteristics of Italy, it is not possible to set up more than two networks and hence two national television broadcasting programmes, one already in operation and the other in preparation. If each network is regarded as a service in itself, one can say that no more than two television broadcasting services are feasible, and consequently if there were no State monopoly for either there would be, at the best, a duopoly, i.e. still a monopolistic situation within the meaning of Article 43, as the Constitutional Court rightly judged.

This, however, was not enough, since as we have seen above Article 43 imposes two other conditions, namely that the undertaking constituting a *de facto* monopoly should by its very nature be of *outstanding value to the community* and that its nationalisation should be for *public purposes*. The Court found that both these conditions also existed in the case of television broadcasting. As regards the first, one can query whether television has reached the stage of being an *essential* public service, but there can no longer be any doubt that it is something of value to the community at large and that it is one of the things of outstanding value, not only—and perhaps not so much—on account of its wide and increasing following among the public, but rather, as the Court observes, on account of “the great importance, in the

present stage of our civilisation, of the needs which television is designed to satisfy—information, education, and entertainment—and to satisfy on an enormous scale, not only for the individual member of society, but also for society as a whole”.

That nationalisation is in keeping with public purposes is deduced logically by the Court from the admitted *de facto* monopoly situation, in that if television broadcasting services were not reserved to the State, they would naturally fall to one or a few persons who could be expected to be animated by private interests, whereas the State is by definition in a position to provide those services with a maximum of objectivity, impartiality, comprehensiveness and continuity throughout the length and breadth of the country. Besides, the necessary guarantees for this purpose are not lacking in the existing regulations governing all broadcasting services (e.g. the Parliamentary Control Committee and the Programme Committee, composed of representatives of all classes concerned and of the users).

It was argued by the appellant companies and by the Council of State itself in its order transferring the case to the Constitutional Court that a duopoly would have served the public interest better by making possible a competition or a rivalry between the “duopolists” that would tend to improve the services, but this was not a decisive objection. In the first place, as is apparent from the sound arguments adopted by the Court, the question of the public interest is not solved merely by providing for competition, and in the second place a State monopoly does not preclude such competition; it will suffice for the State, instead of adopting the system of one single exclusive concession, to grant more than one concession in competition with one another, as was recently done in Britain with the creation of the ITA alongside the BBC—but this is a question of the method of exercising the monopoly which, under Italian public law, is in the discretion of the Government in the absence of a specific law on the subject. Lastly, there is no guarantee that in the case of a duopoly there is always bound to be effective competition between the “duopolists” or that such competition cannot easily be eliminated by cartel agreements between them. One should not lose sight of the fact that in broadcasting services the incentive to do better may be slighter in view of the absence of services that can be apportioned to individual users and of separate and distinct bodies of customers engaged on the basis of contracts that might contain different clauses and conditions varying from one undertaking to another.

5. As for the alleged twofold violation of the Constitution in Articles 21 and 33, the Court began by making it clear that the latter Article 33 (providing that arts and sciences and the teaching thereof are free) did not come into the issue directly, but remained for the purposes of the action *de quo* assimilated to the question of freedom of the use of media of communication in general, to be

solved on the basis of the provisions of Article 21 (1). This provision states that “everyone has the right to express his own thoughts freely (and also, presumably, the thoughts of others) by word of mouth, in writing and by every other medium of communication”.

Now, the Constitutional Court has held that the monopoly of television broadcasting services is not, in itself, at variance with Article 21, and this judgment is fully borne out by the arguments set forth above to the effect that a monopoly of the facilities and of the operation of a public service does not also mean a monopoly of its use, or, so to speak, a monopoly of the needs that the public service is designed to satisfy.

In the meantime it is clear enough that Article 21 does not—and obviously could not—give to any Tom, Dick or Harry the *possession and administration* of media of communication. It merely, but essentially, requires that everybody should *be able to avail himself of them* in order to express and communicate his ideas.

At this point it should be recalled that this intention is perfectly well expressed in a principle of Italian law, which is specifically enshrined in Article 2597 of the Civil Code but is recognised by all to be valid generally, both in private and in public law. This principle is that “whoever carries on an undertaking under a statutory monopoly is *under an obligation to contract with any person requesting the services provided by the undertaking, giving equal treatment to all*”. And this is in fact the case for the State monopolies of such public services as the post and telegraphs, the telephone service, transport, etc., whether they are operated by the State for its own account or farmed out on administrative concessions.

This principle, then, must be all the more valid for Article 21 of the Constitution, which, as distinct from the other cases, affirms separately and independently and invests with constitutional authority, with all the greater guarantees that this implies, the right of everyone to express his thoughts by means of every medium of communication. This is undoubtedly one of the fundamental rights of the individual in States guided by the principles of liberal democracy; it is one that is intended to hold good for the majority and for the minority, for groups and for each single individual and, one should add, that is intended to apply equally for all, and not more favourably to the majority and less favourably to the minority. Admittedly in the democratic State the majority has the power of ruling within the limits of the Constitution, but not that of propagating its ideas in circumstances where it has a statutory privilege over the minority. The minority may turn out to be the majority of tomorrow, thus providing that possibility of rotating and alternating governments and “*élites*” which is a condition of the life and health of liberal régimes.

It is clear that to express one's thoughts through a given medium of communication it is necessary to be able to avail oneself of such a medium. But it is precisely

here that the greater guarantee of the statutory monopoly is apparent. Where the medium is owned and operated by individuals under a system of free competition, as in the case of the Press, many (and indeed the vast majority of mankind) will not be in a position to secure the right to avail themselves of it. If, on the contrary, the medium and its administration have been made the subject of a statutory monopoly, Article 2597 comes into play in general to give everyone the right to request and receive the services in question, to which must be added Article 21 of the Constitution as regards the use of the medium for the dissemination of thought, i.e. with particular reference to its *active* use for the transmission of ideas (in addition, of course, to the right of everyone to its *passive* use, namely the reception of the transmission). It is unnecessary to add that this legal position is every bit as strong if the State is the holder of the statutory monopoly, and indeed it is valid *a fortiori* because the State, more than any private individual, is bound to observe and secure the observance of the Constitution and to create conditions in which its principles may be applied.

6. Nevertheless, despite the foregoing, it would never enter anybody's head that it could be a simple and easy matter to secure, at any moment chosen by the user, the active utilisation of broadcasting and especially television services. The freedom enshrined in Article 21, like all other freedoms, is subject to regulation and restrictions—not just the ordinary ones of law and order, propriety and so forth, but above all the restrictions imposed by the *co-existence* of the freedoms of all men. In terms of public services this means the co-existence of uses on the part of all, including the State, which also has the right, not to say the duty, to be a user of such services.

This is true of all public services, for which the principle laid down specifically for scheduled transport lines in Article 1679 of the Civil Code generally holds good. According to this principle, which though specific is logically of general application, the obligation to cater to demands for the service by the public is contingent upon their being compatible with the ordinary facilities of the undertaking, which are usually stipulated in the regulations or in the deeds of concession in relation to the estimated normal demand for the service, after allowing a certain margin of flexibility, as well as in relation to other imperatives such as physical, technical and financial possibilities. Usually when there is a flood of simultaneous demands which cannot all be met at once, certain criteria of priority must apply. These criteria may vary according to the nature and the peculiar exigencies of each service.

In the field of broadcasting in general and of television in particular, the limitations are at once more numerous and more rigid; there are limits on the networks over which the service can be provided (at present, as we have seen, one only, and in future two at the most); there

are limits on their range, and limits too on the time available for broadcasting. Transmissions must therefore be commensurate with the time available and be fitted in, spaced out and succeed one another in accordance with varied and complicated considerations of urgency, of importance of the subject, of programme variety, of chronological order of requests, etc., etc. The obligation to contract *with*, and hence to provide the service *to*, whoever may so request undoubtedly remains a fundamental duty of the monopoly holder (as is that of equality of treatment on equality of pre-arranged terms for all users, both active and passive, beginning with the tariffs), but it is a duty which must be construed with limitations and according to the criteria and considerations set forth above.

There can be no doubt that all this might very properly be the subject of special regulations, even in the case of television broadcasting services, as has been done for other public services, and the Constitutional Court did not omit to say so in the last part of its judgment, remarking that "it is implicit in the foregoing that a State having a monopoly of a service whose function it is to communicate ideas is under a duty to afford, in an impartial and objective manner, potential possibilities for its enjoyment—naturally within the limits that are necessary for this as for all other freedoms and in ways consonant with the technical and operational requirements—to whoever is interested in availing himself of the service for the dissemination of thought in all its various manifestations. Hence the need for laws to govern such potential possibilities and to provide adequate safeguards of impartiality in the bodies screening applications to use the service, and for laws that are not at variance with the structure of the service, the technical requirements and the other interests that are worth preserving, such as the variety and tone of the programmes, etc."

7. If, after having discussed and upheld the legality of a State monopoly of television broadcasting, the Court's judgment is to give any indication as to whether the same solution might be appropriate to sound radio services as well, it will clearly first be necessary to determine, from the legal viewpoint and with particular reference to Article 43 of the Constitution, which features and conditions are common to both cases and which are the differences between them.

Without wishing to discuss this problem, which is outside the scope of the present commentary, I will confine myself to pointing to some of the factors which would seem to justify a like solution.

As far as the *de facto* monopoly mentioned as one of the conditions in Article 43 is concerned, it is true that it is more clear-cut and circumscribed in the field of television, on account, as stated above, of the extremely limited number of wave channels available to each country. But even in the case of sound radio there would hardly seem to be any possibility of a freely competitive

system of operation, because here too one must reckon with the limited allocations of wavelengths and frequencies at the international level.

However, though it is permissible to doubt whether sound radio fulfils the condition as being a *de facto* oligopoly, it meets the other condition stipulated in Article 43 rather better, namely that the public service must qualify as an *essential* one. I have already had occasion to refer above to the doubt whether this epithet fits the case of television, a doubt, moreover, which must have led the Constitutional Court to disregard this hypothesis among the three envisaged in Article 43.

What is more, television amounts to a series of veritable shows, which are necessarily of a varied nature and of mixed artistic value in every country in the world. It is difficult, at least in the present state of affairs, to believe that providing the public with several hours of such shows a day can constitute an *essential* public service.

The position is different with sound broadcasting, which has now reached the point where it is the most powerful and one of the most efficient media of information in general and of communication of ideas in particular, and one which it is unthinkable to do without in the interests of society and of the State.

The Finnish Copyright Bills

by Eero Vallila

Legal Adviser of the Finnish Broadcasting Corporation

The Committee set up to frame a new Copyright Bill, whose hearings began in 1934, has completed its deliberations, and the Government has since tabled in Parliament, at the Spring Session, a Bill respecting copyright in literary and artistic works and a Bill respecting rights in photographs. The work of the Committee had been to some extent retarded and interrupted on account of the war, and in addition it had awaited the conclusion of international agreements in certain fields and the holding of talks with the other Nordic countries. A solution of the problem of "neighbouring rights" appears to be in sight, but the Nordic countries have considered that it was not necessary to wait until the international agreements on the subject had been signed, and each country has tabled draft legislation in final form.

An attempt has been made to create unified legislation on copyright in the Scandinavian countries. This is an altogether praiseworthy intention, no doubt, but in some respects the circumstances in Finland differ so widely from those obtaining in the other Nordic countries that it would have been desirable to make allowances for this fact in the legislation.

As the sections on broadcasting have been couched by our Committee in terms almost identical to those in the Swedish Bill, we are in more than one respect indebted to the Swedish broadcasting organisation, which succeeded in influencing the contents of the Swedish

Bill on a variety of points. As a result of this we have been able, for instance, to include in the Bill a "compulsory licence" whereby a radio or television organisation that has an agreement with an organisation representing a large number of Finnish authors in the field in question is also empowered, on payment, to transmit published literary or musical works by authors or composers whom the organisation does not represent. This right, however, does not extend to dramatic or dramatico-musical works, or indeed to other works if the author has forbidden them to be broadcast, or if there is reason to believe that he would be opposed to such action.

In view of the fact that the *EBU Review* has already published, among others, an account of the Danish Bill¹ which the Finnish draft conforms to fairly closely in pursuance of the common policy of the Nordic countries, it is not proposed to discuss the Bill in detail section by section, but merely to draw attention to those passages which, in my opinion, call for improvement as far as broadcasting is concerned.

Copyright is defined in section 1 of the Bill, which states that the author of a literary or artistic work possesses a copyright in that work. The list of examples which follows includes a reference to cinematograph works.

¹ *EBU Review* No. 62 B. See also *EBU Bulletin* No. 44 for an account of the Swedish Bill and *EBU Review* No. 63 B for the Norwegian Bill.

Although the Bill does not contain anything more specific about cinematograph works in its subsequent provisions, I am of the opinion that the expression "cinematograph work" ought to have been defined in the introduction, and above all that for the sake of television some indication should be given as to what is *not* deemed to be a cinematograph work. Another vexed question is whether the Bill should have determined the ownership of copyright in such a work.

The introduction to section 3 also needs a few finishing touches. Under the provisions of this section, the author must be indicated in accordance with the dictates of custom when a copy of a work is prepared or when the work is brought to the public as a whole or in part. It would have been helpful to spell out what is meant by "custom" in the introduction, e.g. in the case of non-stop concerts from records or on television.

In the chapter on restrictions on copyright, the right of the Press to give excerpts of works is only defined (as in the Berne Convention) in terms of the printed Press, without any corresponding right being given to broadcasting. It is however possible under section 21, when a news event is broadcast on sound radio or television, to include short excerpts of a work given as part of the event in the broadcast programme. It is also permissible under section 26 to show an artistic work in the course of a television programme, provided that such reproduction of the work is only of incidental importance in the broadcast.

Pursuant to paragraph 3 of Article 11 *bis* of the Berne Convention, a provision on the right of a radio or television organisation to tape-record a work has been written into the draft. Under this clause an organisation which possesses the right to broadcast a work also has the right to put it on tape for use in its own broadcasts. These ephemeral recordings are defined in the introduction, where it is said that the period for which the tapes are kept and the number of broadcasts therefrom should be limited; in the Committee's view this means (in the conditions obtaining in the Scandinavian countries) that the recording should not be kept for more than a year and should not be used for more than four broadcasts. In addition the tape recording should be destroyed at the end of the above-mentioned period or when it has been used for the stated number of times. In keeping with the Berne Convention, however, an exception could be made to the requirements concerning destruction, in that recordings of great historical value may be kept in public archives.

As I see it, the right of tape-recording should not be restricted solely to the organisation's own transmissions, because this hampers exchanges of programmes internationally. If the broadcasting corporation has had the right to broadcast a work and in virtue of this right has taped it for subsequent transmission, broadcasters in other countries can take it live by landline when it is broadcast live from this recording, for in such

a case it is still the organisation's own broadcast. However, since landline transmission of programmes is of inferior technical quality as well as being vastly expensive, it is naturally desirable that the works in question could be supplied to would-be users in the form of recorded tapes. The section mentioned above does not, however, afford this possibility.

The whole of the fifth chapter of the Bill is devoted to "neighbouring rights". The Bill starts out from the principle that an artist's performance of a literary or artistic work may not be recorded without his consent on a phonogram, a cinematograph film or other contrivance by which it can be reproduced, nor may it without consent be communicated to the public by radio or television or by direct transmission.

Failing the consent of the performer it is likewise prohibited to transpose a performance recorded on such a contrivance on to another similar vehicle before a period of 25 years from the date of recording has elapsed. It is likewise forbidden to copy without the manufacturer's consent a phonogram or any other contrivance on which a sound recording has been made within 25 years from the date of recording. In this case the transposition of a recording on to another similar device is also deemed to be copying.

The payments due to performers and the phonographic industry in respect of the use of the above-mentioned contrivances are governed by provisions to the effect that broadcasting and television organisations using them must pay a royalty to the manufacturer, who in turn has to hand part of the proceeds over to the performers. If several performers have taken part in the performance, they may only exercise their rights jointly.

The Bill proposes to protect broadcasting undertakings by forbidding the rebroadcasting of radio or television programmes or the recording of such programmes on a medium whereby they can be reproduced, without the assent of the organisation making the broadcast. Without such assent it would also be forbidden to exhibit a television broadcast to the public in cinemas or similar places.

Should a sound radio or television programme be recorded on a medium of this nature, it is forbidden to transpose the recorded programme on to another similar medium without the permission of the originating organisation until the end of the period of 25 years from the year in which the broadcast was made.

The last section in this chapter contains a provision to the effect that copy supplied under an agreement by a foreign news agency or by a foreign correspondent may not be divulged to the public by competing papers or by broadcasting without the recipient's consent until 12 hours after the publication of the news in Finland.

The individual sections on neighbouring rights could do with some redrafting and general tightening-up, but it would be more to the point to consider the chapter

first as a whole, in relation to the principles on which it is based.

It will be allowed that the performers' right to control recordings of their performances on phonograms, cinematograph films and other reproduction media is justified, at least to some extent. On the other hand, their right to collect royalties in respect of the use of performances so recorded in the course of a broadcast or televised programme is open to question, particularly in view of the fact that entitlement to such payment is limited to radio and television broadcasts. In the introduction to the section, the main reason why these payment provisions are essential is given as the falling-off in performers' earning power in consequence of the use of "canned" music in cafés, public houses, restaurants and ballrooms affects the money-making possibilities of the performers more than its use in radio and television programmes, which after all represent valuable publicity for the performers.

It should be mentioned at this point that in 1927 two provisions, patterned on certain foreign precedents, were inserted in the Finnish Copyright Act, their effect being that the transposition of a written work or a musical composition on to a *corpus mechanicum* reproducing words or music, through the medium of an artistic performance, was to be deemed to be an adaptation or arrangement of the work, thereby giving the performer a copyright in the work so adapted. In practice, however, these provisions did not give the performers the protection that was aimed at, and this was particularly true in the case of recordings of performances on phonograms. What actually happened was that the record manufacturer got the performer, at the time of recording the performance, to make over his rights to royalties in respect of reproductions of the performance by means of the record; the manufacturer thus received fees for the performance of the record on the radio and otherwise which the Act intended should go to the performer. For this reason these provisions of the Copyright Act were repealed in 1941.

Up to a point the arguments that can be used against the proposed payments to the phonographic industry are the same as those against the fees prescribed for performers. Moreover, some of the conditions obtaining in Finland are so different from those in other Scandinavian countries that it would be justified to depart from the general principles observed by them. In the Committee's report one of the main grounds adduced for this payment is that broadcasting and television "should take a hand in financing the costly, though in many ways culturally vital, activities carried on by the record manufacturers". The rejoinder to this is that in Finland, as distinct from the other Nordic countries, the lion's share of the record manufacturing industry's output is "pop" music, and lowbrow "pop" at that. Indeed, it is almost true to say that the only records of

serious music by Finnish composers have been made from performances tape-recorded by the Finnish broadcasting organisation and supplied by it to the record pressing firms. Thus the fine phrases about participation in work of importance for intellectual culture will not hold water, at any rate in Finland.

What is more, the peculiar circumstances prevailing in Finland mean that the national broadcasting authority has to shoulder burdens that are non-existent in other countries. Finland's territorial vastness in relation to its population makes it necessary to keep up a pretty expensive network of transmitters and also boosts the other technical costs, all of which have to be borne by a relatively limited number of listeners. Again, the major part of the programmes has to be put out in two languages, neither of which is among the great literary languages, with the result that we are forced to import intellectual works in quantity and pay performing and translation fees. It therefore hardly seems fair to saddle broadcasting with more liabilities.

As for the protection of radio and television broadcasts, it might also have been possible to put language to this effect into the Broadcasting Act which is currently under consideration with a view to its renewal. In that case the whole of chapter five of the Copyright Bill could be deleted.

Right now, however, the thinking of the Finnish Parliament seems to be that it is more important to establish uniform Nordic legislation than to bother about the special conditions in Finland mentioned above, and on which we have made representations to Parliament in the name of the Finnish broadcasting organisation. It is therefore to be expected that the chapter in question will remain in the legislation.

If this fifth chapter is kept in the Act, it will be necessary to make some alterations in its provisions. The fact of giving each performer an individual right to control broadcasting of his performance would undoubtedly make for colossal difficulties, without any commensurate advantages to the performer. As the Bill stands, any musician in a formation, however large, could obstruct the broadcasting of a work performed by that formation, and experience shows that such a right may lead to abuses. If, therefore, the proposed provision is passed into law, it will be quite essential to say how it applies to ensembles of one sort or another.

The provision to the effect that a performance recorded on a given medium may not be re-recorded on another medium without the author's permission is altogether unjustifiable when it is a matter of transposing it from one of the technical aids of broadcasting to another. Non-stop record programmes, for instance, are often taped in advance, and radio plays are often accompanied by music from records, which has to be recorded on tape beforehand along with the rest of the programme. This part of the Bill, then, will also need looking at.

The last section in the chapter, under which it would be prohibited for the radio (and others) to divulge Press news provided by a correspondent abroad before the stated time has elapsed after publication, should by rights be framed on the basis of reciprocity, the Press being subjected to the same restrictions as regards reports from the broadcasting organisation's correspondents. The chances are, however, that such an amendment would be of little practical importance.

Chapter 7 of the Bill contains provisions on penalties and damages, it being proposed to provide severer penalties than the present ones for what are deemed to be criminal acts. In certain circumstances an offender could even be sent to prison for anything up to twelve months. The proposed clauses on civil remedies, i.e. damages, are identical in essence with the corresponding provisions in the other Scandinavian Bills.

The last chapter, chapter 8, contains provisions concerning the implementation of the Act. In principle it is proposed that the Act shall apply only to works by Finnish citizens and persons domiciled in Finland and, irrespective of the author's nationality, to works first published in Finland, as well as to architectural works built in that country and artistic works incorporated in a building similarly located. Stateless persons and refugees whose usual residence is in Finland are placed on the same footing as Finnish citizens. The Act would be applicable in relations with other countries only in pursuance of a decision by the President of the Republic and subject to reciprocity, on the condition that Finnish works are protected in such other countries. This last-mentioned provision is intended, *inter alia*, to enable Finland to accede to the Berne Convention as revised at Brussels in 1948.

If the Bill carries, it will also be possible for Finland to accede to the Universal Copyright Convention of 1952.

In the case of neighbouring rights, on the other hand, the operation of the Act is governed by the principle of territoriality, being made conditional upon the performance, vocal recording on a technical contrivance or broadcast (radio or television) taking place in Finland. The Bill further provides that the right of the record manufacturers and performers to remuneration will not apply to recordings or similar contrivances in existence before the commencement of the Act.

The "Bill respecting rights in photographs" is based for the most part on the same principles as the corresponding Act in 1927. Although one possibility was to grant protection under the law of copyright to certain photographs of outstanding artistic worth, it was nevertheless considered more expedient to lump all types of photographs together under the same Act. It is, however,

proposed to retain the protection given by the Copyright Act of 1927 to series of photographs of high scientific or artistic value.

The Bill likewise contains provisions designed to safeguard the non-pecuniary or "moral" rights of the photographer, these provisions being more or less the same as the corresponding provisions in the draft Copyright Bill.

It has nevertheless been necessary to place restrictions on the rights in photographs, as on copyright itself, not only in the interests of the person receiving the photograph but also for cultural and social reasons. Thus, it is proposed to enact provisions on the making of copies of photographs for private use, for public records and for libraries, on the insertion of published photographs in critical and scientific articles and in works intended for teaching purposes, on the showing of photographs in school, in adult education and in charitable or other activities of value to the public at large. These provisions are closely patterned on their counterparts in the Copyright Act, though there are one or two novel features; the photographer would be entitled to payment when a published photograph is inserted in a popular scientific work or a work intended for use in teaching, and when the showing of a photograph is part of a news event shown on television or in a cinematograph film the photograph may be inserted in the representation of the event. The Bill in question also contains a clause which matches those on the subject of literary and artistic works, whereby a Finnish television authority designated by decree would have the right, upon paying the photographer a fee, to show a published photograph, provided that the photographer has not prohibited such showing or that there are good grounds for the belief that he would not oppose it; this, however, does not apply to cinematograph films. Furthermore, a television authority entitled to show a photograph in its broadcasts would similarly be entitled to reproduce such photograph under certain conditions in a cinematograph film or other like recording for use in its own broadcasts.

One important innovation in the Bill is the lengthening of the term of protection from 10 to 25 years from the year of first publication of the photograph.

Both of these Bills were tabled in Parliament at the Spring Session, but there has not yet been time to give them more than a superficial perusal, and so it seems likely that they will not be promulgated this year. Lastly, if I were to guess when the prospective Acts will come into force, I would say that 1st January 1962 seems the most probable date. By then, of course, the Bills in question may take on an altogether different appearance.

News and Information

GERMANY (Federal Republic)

Scope of Performers' Rights. Judgments of the Supreme Court. — On 31st May 1960 the Supreme Court in Karlsruhe handed down four judgments that are of capital importance, since they analyse and define, under the law as it now stands, the scope of performers' rights, which have hitherto been variously interpreted in the lower courts. It is regrettable that the length of the judgments makes it impossible to reproduce them *in extenso* and that it should be necessary to make do with a much abridged summary of each decision, for one may well ask whether these latest judgments will not have repercussions on the recently published draft Copyright Bill, which is also intended to govern "neighbouring rights".

First Case

Performance of Radio Programmes in Public¹

One of the performers' professional associations, acting as the assignee of its members' rights, issued a writ against the proprietors of certain licensed premises for having caused the live or recorded broadcast performances of its assignors (other than performances recorded on commercial records) to be heard over a loud-speaker in public without their prior consent. The first court gave judgment for the defendants, but the Court of Appeal reversed this decision and found for the plaintiffs. The latter decision was upheld by the Supreme Court for the following reasons:

1. In the case of recorded performances, the relevant provision of law is section 2 (2) of the Copyright Act, whereby sound recordings are deemed to be arrangements or adaptations of the work thus recorded, the adapter's copyright belonging *ab initio* to the performer. In the case of an orchestra this right forms part of the possessions not only of the conductor and soloists, but also of each individual member of the formation. It includes, among other things, the right to control the use of the recording for the purpose of public performance. In particular—

(a) the broadcasting organisation whose broadcasts were used in the public performances in question had given an undertaking not to obstruct the performers it employed in the exercise of any rights which they might assert against persons turning the broadcasts to account for the purpose of pecuniary gain. This being so, there is no contractual stipulation to prevent the performers, or their assignees, from enforcing the rights ensuing from the said section 2 (2) of the Act against the defendants;

(b) as early as 1953¹ the Supreme Court decided that section 22 (a) of the Copyright Act, which provides copyright exemption for public performances from records, did not apply to public performances by means of an electro-acoustical record player. The same principle holds good for the communication of radio programmes to the public by loud-speaker, the more so since, contrary to a pre-war ruling, each such communication constitutes a performance in itself, independently of the broadcast. Seeing that this situation has received contractual recognition from 1954 onwards by the fact that GEMA and the association of hotel proprietors, café proprietors, etc. fixed tariffs for the calculation of authors' fees, it is fitting to grant the same advantages to performers as being the proprietors of the adapter's copyright in sound recordings of their performances;

(c) the first court, holding that section 2 (2) of the Act attached this adapter's copyright to the recording rather than to the performance itself, concluded that the copyright could only be asserted against the person physically using the *corpus mechanicum*. The court thereupon dismissed the action, since it is patent that a person operating a radio amplifier does not physically use the recording that is played by a radio station. The Supreme Court considers that this reasoning ignores the *ratio legis*, since Parliament expressly intended to put a recorded performance on the same footing as an intellectual work derived from another, with all the consequences that this entails. Now, if the lower court's theory were correct, "indirect" or off-the-air copying of a record would not have the same legal implications as "direct" copying in which the record is physically used. But this would be tantamount to making the clause in question inoperative, whereas it had been intended by the legislative authorities to afford the record manufacturers protection against copying in any form.

2. It having been established that the performer can control public uses of a broadcast of his recorded performance, the question now arises whether his right also extends to broadcasts of live performances. The Court answers this question in the affirmative, basing its argument on provisions other than those of section 2 (2) of the Copyright Act, which apply only to recorded performances.

According to the principles of common law, the rights of the individual and the law on unfair competition, a performer should be free to determine the nature and the extent of the commercial use to be made of his performance. He does not relinquish this discretionary right by signing a contract with a broadcasting organisation,

¹ See *EBU Review*, No. 50 B, p. 30.

¹ See *EBU Bulletin*, No. 24, p. 194.

for it is not immaterial for him to know whether the broadcast is to be used solely in private, or whether it is also to be heard in public, e.g. as background music in a restaurant or public house. But even if it is conceded that such establishments would not employ live performers if they were denied the use of radio broadcasts, the fact remains that those broadcasts would often be replaced by gramophone records, over which, as shown above, the performer unquestionably has control and accordingly the right to levy fees. It thus follows that the fact of causing broadcasts in which performers appear to be heard in public, if it has not been authorised by the performers, constitutes an act of unfair competition and appropriation of the work of others, and moreover an act performed with a view to pecuniary profit at the performer's expense. It is therefore right and proper to decide that performers' broadcast performances, even when they are not recorded beforehand, may not be caused to be heard in public without the prior consent of the performers.

(The Supreme Court did not consider how café proprietors, hotel-keepers, etc. could secure such prior authorisation from all the German and foreign performers who may be heard in live or recorded performances on the German radio.)

Second Case

Rights of Orchestra Musicians¹

As the conductor of the orchestra he had built up, the defendant had authorised a broadcasting organisation to broadcast some of its performances live and to give repeat broadcasts from recordings. Not having turned over to his musicians a proportion of the fees for the repeat broadcasts which he had received from the broadcasting company, he was sued by a musicians' professional association to which members of the orchestra had assigned the rights which they considered they possessed vis-à-vis the conductor. The action was mainly based on section 2 (2) of the present Copyright Act. The first court dismissed the plaintiffs' claim, and the Court of Appeal rejected their appeal. The Supreme Court reversed this judgment and sent the case back to the Court of Appeal for a new judgment. Its grounds for so doing, in so far as they are not dictated solely by the factual circumstances of the case, are as follows:

1. The Court of Appeal had held that the adapter's copyright instituted by section 2 (2) of the Act vested in the case of collective performances only in the conductor and any soloists there might be, and that the musicians in the orchestra could not claim the benefit thereof, on the grounds that as the right was patterned on copyright it should be interpreted according to the same criteria and be conferred on those who make a "personal contribution" to the group contribution. In the case of collective performances the conductor alone puts the personal seal on the performance of the ensemble,

the members of which are so subservient to him that it would be an abuse of language to speak of a personal contribution on their part, the condition *sine qua non* for a right in the nature of a copyright.

2. According to the Supreme Court, this analysis of section 2 (2) of the Act is foreign to the intentions of the legislature. Parliament sought to bestow protection not so much on the performer as on the record manufacturer and, in order to make it effective protection for the latter assignee, necessarily considered that any performance by an artiste would be sufficiently personal in character to sustain such a right. Any performance, whether vocal or instrumental, proceeds from the personality of the performer and is indissolubly linked to his personality. It is part of his "sphere of individuality", no matter whether the performer is a soloist or whether his performance is fused into the group performance and cannot thereafter be distinguished from it. The Court of Appeal was all the more in error as to the meaning of the provision in question in that it had ignored the fact that even the *jus imaginis*, a person's right to his picture, which is dealt with in the Artistic Copyright Act, is endowed with all the attributes of copyright though it is manifestly not based on any creative activity. Section 2 (2) of the Act has always been regarded as a "fiction": but the characteristic of a fiction is precisely to liken the effects of two different situations.

3. Moreover, the thinking of the Court of Appeal has chaotic implications defying any rational interpretation. What would the legal position be in the case of an orchestra which had rehearsed under one conductor but gave the full-dress performance under the baton of another? And what about collective performances given without a conductor, as is the case with the majority of dance bands? These examples alone suffice to show how tenuous is the theory which the Court of Appeal espoused, whereas the difficulties of interpretation disappear and the *ratio legis* comes into its own if every member of an orchestra or choir is taken to give an individual and personal performance which vests in him the right provided in section 2 (2) of the Act. This copyright carries with it the exclusive power to authorise or prohibit the use of a possible fixation for the purposes of broadcasting.

4. In sending the case back to the Court of Appeal, the Supreme Court nevertheless concedes that the rights flowing from section 2 (2) might have been tacitly assigned to the defendant, or that the latter might have been habilitated, depending on the factual situation of the orchestra, to exercise those rights as against third parties.

Third Case

Recording and Broadcasting of an Opera¹

The defendants, a broadcasting organisation, had made a recording, with the consent of the theatre management

¹ See *EBU Review*, No. 48 B, p. 28.

¹ See *EBU Review*, No. 49 B, p. 25.

and the conductor, of a performance of the *Marriage of Figaro* at the B. Municipal Opera House, and had used this tape in radio programmes. Part of the fee paid by the broadcasting organisation to the Opera had been tendered to the orchestra. The latter, considering that its authorisation was needful in order to make the operation a lawful one, instructed a professional association of musicians to which it had assigned its rights to bring an action against the organisation, which, in turn, cited the municipality of B., the proprietor of the Opera House, as warrantor. The action succeeded in the first court and on appeal, but when tested in the Supreme Court resulted in judgment being given for the defendants with costs. The main reasons adduced by the Supreme Court are as follows:

1. Since the primary issue is not who holds the rights proceeding from section 2 (2) of the Copyright Act, as this provision applies to recordings already made, but rather in what circumstances the original fixation is lawful, the Supreme Court recalls that it has already held the act of recording a conversation without authorisation to be a violation of the personal rights guaranteed by the Constitution. Neither is it disputed by the text-writers that every form of vocal expression by the human being is so much an expression of his personality that the fixation or broadcasting thereof without his consent is unlawful. The same principle holds good for performances by vocalists or instrumentalists, for they manifest the performer's individuality. It matters little that the performance, especially if it is a group performance, is a scant indication of the performer's personality; the same is true of the voice or image of the individual. Even if it is merged with the work of others, every performer's playing is a reflection of the make-up of the individual concerned, and can therefore not be recorded or broadcast except with his consent.

2. This line of argument is borne out by the fact that the quality of the rendering may depend on the people it is meant for, and the performer must therefore be in a position to prevent a performance which he thought of as a fleeting one, for a limited audience, from being used in a wider context and, what is more, perpetuated in the form of a recording. He must also be able to select his recorder¹ and thus satisfy himself as to the technical quality of the fixation. It is also not immaterial that it is easy to alter a tape recording and even to mutilate the recorded performance. Lastly, the manner in which the recording is used may be detrimental to the performer, who may be loath to be heard in chain stores, buses or trains. It follows that, if only from the personal angle, a performer is invested with the right to determine the conditions in which his performance shall be used, above all as regards recording for broadcasting and broadcast transmission from recordings which he has not authorised.

¹ It will be observed that the author is deprived of this right if he is obliged to put up with the effects of a statutory licence, as is indeed the case in Germany.

3. But it is not only the personal interests of the performer that are at stake; his pecuniary interests are also involved. If he is not in a position to fix his fee according to the uses to which his performance is to be put, with the right to authorise or to forbid such uses, he will have to look on helplessly while the performance for which he received a run-of-the-mill fee is used much more widely than was contemplated in the contract, both by the other party to the contract and by third parties to whom he has no contractual obligations at all. Now, the latter, by appropriating for nothing a performance that normally attracts a fee, are committing an act that is contrary to public policy and are infringing the law on unfair competition, for they are using the work of others without paying for it in order to increase their own money-making prospects. It is immaterial that the performer and the user of his performance are not in competition with one another. The danger of causing the performer financial loss by diminishing his opportunities for employment is in itself sufficient reason for applying the law.

4. Having thus established that the tape recording of an opera with a view to broadcasting necessitates the consent of each individual performer taking part in the performance, one must further inquire who is empowered to exercise this right of authorisation in the case of a collective performance of this sort. Admittedly, when several persons jointly perform some act which confers rights on each of them, the exercise of such rights is ordinarily governed by contract. In respect of collective performances, doubtless because of the legal uncertainty which has hitherto prevailed, the law says nothing, and this is why legislative action is contemplated both at the national level (cf. section 87 of the *Ministerialentwurf* of 1959 for a Copyright Bill) and on the international plane (cf. the draft Conventions on neighbouring rights). The commentary on section 87 of the *Ministerialentwurf* states that in the case of collective performances the individual artiste must fall in with certain restrictions in the common interest, and that it is desirable that the exercise of all the rights should be entrusted to a limited number of representatives. This legislative trend is in keeping with the general legal principle that the exercise of interdependent rights should above all be governed by good faith and fairness. A person who enters into an association with others must also accept the limitations which this implies and fall in with the will of the majority, or the decisions of the body appointed by the majority or under the constitution and rules. It is irrelevant that the present case involves personal rights, for personal rights may also be circumscribed by the legitimate interests of others. It follows that the litigious recordings and broadcasts are unlawful in so far as they were not authorised by the management board of the orchestra.

5. But can this board exercise the musicians' rights heedless of the rights of the other participants, namely the conductor, soloists and chorus? It must be acknowledged

that the ties existing between the musicians in an orchestra are closer than those between the orchestra as a whole and the other groups in the same theatrical performance. It follows that each group exercises the rights belonging to its members independently, on the understanding that none of the groups may act in such an arbitrary manner as to ride rough-shod over the interests of the other groups.

6. Having established these principles, one must now consider the special position of publicly-run theatres and orchestras, for such an orchestra is the issue in the present case. The Court notes that the employment contracts do not warrant a *prima facie* presumption that the musicians' rights are assigned to their employer. True, such an assignment had been found by the former *Reichsgericht* in favour of the record manufacturers as regards the right to authorise the broadcasting of records; but that was a normal and foreseeable use. In the case under review, where the musicians were hired for the proximate purpose of playing in the Opera House and where broadcasting of their performances, and recording to that end, were foreign to that purpose, there can be no presumption of a tacit assignment. It remains to be determined whether, by reason of their contracts of employment, the musicians were required to permit such secondary uses of their performances in return for fair remuneration, when it is not proved that it was unjust to expect it of them.

7. In this connection the Supreme Court is of the opinion that there may be circumstances in which an employee must agree to provide special services other than those provided for in his contract, particularly where he enjoys similar status to that of a civil servant, entitling him to superannuation and similar security benefits, as in the case of the employees of the municipality cited by the defendants as warrantor. The employee has a claim, nevertheless, to additional pay, just as he would for working overtime. Failing any specific stipulations in the contract, the plain interpretation of the employment contracts of the musicians in question will support the view that they are required to permit tape-recording for broadcasting purposes, the more so because it brings them in additional earnings and they are not asked to do any additional work. It must also be remembered that the municipal theatre in question is heavily dependent on subsidies provided out of public funds, and that it thus has everything to gain, as the musicians are aware, from getting public broadcasting organisations to take its performances. And it is the mission of the broadcasting organisations to bring the arts and cultural activities generally within the reach of the widest possible audience.

The Court thus arrives at the final conclusion that "the members of the orchestra, under their contracts with the B. Municipal Opera House, and in the absence of stipulations to the contrary, are as a rule required to permit their renderings in operatic performances to be tape-recorded by broadcasting organisations and to

permit these tapes to be used for radio programmes, unless there is some serious artistic or other reason why they should not; they may, however, demand special remuneration from their employer in consideration of such secondary uses of their services, the amount of such remuneration to depend in general on the scope of such uses (repeat broadcasts, relays by other broadcasting organisations, etc.)."

In view of this conclusion, the appeal would be allowed with costs.

Fourth Case

Public Performance of Records¹

BIEM and GEMA had brought an action against certain record factories for a declaratory judgment that the defendants did not possess a performing right in the records manufactured by them under the BIEM/Industry contract, or, alternatively, that they could not authorise at a fee the performance in public of records of works in the GEMA repertoire or prohibit such performance if GEMA had authorised it. The first court dismissed the suit. The Court of Appeal varied this judgment to the extent that it forbade the defendants to *authorise* public performances reproducing works under GEMA control. On appeals lodged by both parties the Supreme Court reinstated the judgment of the original court, on the following main grounds:

1. The origins of section 2 (2) of the Copyright Act and the constructions laid upon it by the courts do not leave it in doubt that, although the *ratio legis* was to give the phonographic industry indirect protection against copying, this provision nevertheless gives the performer a derived copyright in his sound recording that is wholly comparable to an arranger's (or an adapter's) copyright. It was therefore logical to hold in 1936 that the record industry, as the assignee of this copyright, could authorise or prohibit broadcasting from records. It remains to be seen whether the same right subsists in the case of public performance.

2. On 6th November 1953 the Supreme Court acknowledged that the author or composer had a right to control public performances from records by means of electro-acoustical record-players. Does this same right also belong to the performer, *qua* adapter? In the Act itself, which makes no distinction between the composer of the original work and the fictitious adapter (i.e., the performer), the answer is in the affirmative. This, moreover, does not imply any whittling away of the author's or composer's rights in the original work. The work can only be communicated to the public through the intermediary of the performer, and it is therefore only fair that the author should share the amount paid for the performance with him. It has never been disputed that this must be so in the case of live performances, and it is only natural that the same should apply when the per-

¹ Cf. *EBU Review*, No. 49 B, p. 22.

formance is based on a recording, particularly as the performer's share in the event of phonographic performance is considerably smaller than what he is paid for a live performance. There is likewise no danger that the payments accruing to performers for the use of records in public will reduce the sales of records and hence diminish the composers' receipts; even if this were so, the loss would be offset by the fact that nowadays records permit of giving mechanical performances in places where live recordings would be unheard of. The difficulties to which the plaintiffs refer that would beset a public user of records in securing licences from all the performers on records does not carry weight either, since it is not unlikely that collecting societies will be established to act on behalf of all performers, and since it is common knowledge that the manufacturers are in any event the assignees of the performers' rights, however numerous they may be.

3. It is true that when section 2 (2) was written into the law, the industry itself which now claims a performing right had urged that mechanical performances should be copyright exempt, and had obtained its wish in the form of section 22 (a). But circumstances have changed since then, and it is only fair that the industry should demand special remuneration when records that are primarily intended for private use are utilised in public. The performer, too, has a similar interest, and he cannot be asked to tolerate that records made for use in the home should be used, against his will, as background music or even for advertising purposes.

4. The sale of a record does not imply that the performing right is thereby "spent", and the subsistence of such a right is not at variance with the general principles governing the ownership of movables. A record is not merely a material object, but is also a vehicle for im-

material rights which, except for the right of distribution, continue their existence in the hands of the purchaser. As distinct from the sound engineer, for example, the performers have an undeniable interest in controlling the uses to which phonograms are put, in the name of their personal and pecuniary rights.

5. The BIEM/Industry contract does not prevent the industry from exercising the rights which it secures on assignment from the performers. The contract merely states that the industry does not acquire the performing rights in the recorded work, but it does not deal with the performers' rights which arise from an independent source, viz. the "arrangement" which the recording of their performances is deemed to be. The situation is thus as follows: the author or composer of the original work retains his performing right, but an adapter's right comes into being at the time of recording, so that a public user of a record requires two authorisations to make his use of the record lawful. If the industry had relinquished the right assigned to it by the performer, a special stipulation to that effect would have been necessary in the contract with the BIEM, *a fortiori* because this is a "future" right which only comes into existence with the act of recording.

Consequently the performer possesses the right to authorise or to prohibit the use in public of his record which constitutes an adaptation of the recorded work and gives rise to an original copyright whose first ownership vests in the performer in his capacity of an original adaptor. At the same time the author of the recorded work has a matching right in relation to that work. The manufacturer, as the performer's assignee, may therefore exercise the latter's copyright without GEMA's being able to prevent it on the grounds of the BIEM/Industry contract.

Book Reviews

La photographie et le droit d'auteur: Etudes de droit comparé, by René GOURIOU, Doctor of Laws. Librairie générale de droit et de jurisprudence, R. Pichon et R. Durand-Auzias, 29 rue Soufflot, Paris, 1959.

The French Literary and Artistic Property Act of 11th March 1957 had a considerable backlog of court decisions to digest, enough indeed to surfeit even the most voracious Parliamentary appetite. True, the Courts had prepared the victuals with artistry and care, so that many a titbit could be swallowed whole: the

entire chapter on the publishing contract (Chapter II of Part III) is a codification of the basic rules that have gradually emerged from the lawsuits that the Courts have decided. In France publishing law was for many years praetorian law, and it remains so on a number of secondary points, but no one will regret that its principles should now be digested in a panoply which befits the standing edicts of authority.

This incorporation of case law into statute law is again visible in the case of photographs, though here the method has not given such good results. Mr. Gou-

riou's book (probably a French doctorate thesis supplemented by references to foreign law, particularly French and German law) was written to throw light on the shortcomings of the solution enshrined in the Act of 1957. Article 3 of this Act provides that photographic works of an artistic or documentary character (and works of such character produced by a process similar to photography) shall qualify as intellectual works—and hence be eligible for copyright protection. *A contrario* no copyright will subsist in photographic images that do not satisfy the statutory definition. At first sight this strikes one as being sensible enough. In the case of writings it is quite easy to distinguish between a perfectly commonplace sequence of words (e.g. it's turned out nice today; I'm going for a walk) and a sentence constructed in a desire to render some particular thought or impression. In the case of photographs, this is not so simple, since they are not wholly the product of human intelligence or artistic taste, and in every case the action of the chemico-physical process combines with that of the photographer. How is one to assess the relative importance of the unique and irreplaceable contribution of the photographer (e.g. the choice of subject, and the preparations for recording it on the sensitised material) and the other infinitely unvarying element constituted by the operation of the camera and the chemical reactions that give the photograph? A further difficulty is that the Act stipulates that the merit of a work shall not be a criterion for protection.

These almost contradictory stipulations are, to say the least, a little baffling. On the one hand we are told that only artistic or documentary photographs are covered by the Literary and Artistic Property Act, while on the other hand we are forbidden to weigh the merit of a photograph in order to determine whether it comes up to the necessary artistic or documentary level to qualify for protection. It is no simple task to find a legally viable criterion which will enable a given photo to be classified inside or outside the bounds of copyright. In the writer's view it will prove necessary to be very broad-minded and to reject only automatic photographs of the "Photomaton" type and photostats—but surely this might exclude the very documentary photographs we are talking about?

Mr. Gouriou aptly remarks that a form of words making copyright subsist in photographic *works* would have made matters easier. The future—and perhaps the not too distant future, at that—will reveal the shortcomings of the discriminatory system applied to photographs, unless the courts make up for the failings of the law. It would not be the first time that the Bench would successfully redress the inadequate work of the legislature; but even the most able judicial exponents (under the Roman law system) can only determine the issue before them, and there is no absolute guarantee that precedent will stand unchanged in the absence of a sound, general and abstract law. The author points to noteworthy

fluctuations under the previous system. Photographic portraits were first of all considered commonplace products and "gradually were then deemed to be works of art" (cf. p. 41). The same change occurred in the case of snapshots. In 1912 the Castres Commercial Court declared that "photography, which is now very widespread, has in most circumstances lost that artistic character it might possess when it was only little practised" (p. 43). A curious opinion indeed, and one which, viewed in a present-day light, seems to be flying in the face of the facts.

Should one advocate a provision giving all photographs the status of artistic works? Mr. Gouriou examines this question closely. It has been asserted that a photograph is a technical product, ruling out any creative activity on the part of the photographer, but modern criticism rejects this wholly negative contention. Obviously in the photographic process the photographer does not have the same 100% personal influence as the author in a work of art. But although more limited, the photographer's contribution is nevertheless discernible. Everything which goes to prepare the crucial moment of recording when the shutter is tripped is for the photographer to choose. Landscapes or portraits may be attractive and expressive or otherwise, depending on whether the lighting, exposure and focusing of the camera are well chosen or not. This is a field where the human element has not surrendered to technology. The photographer "prepares the image, perhaps with consummate skill, but the image itself comes into existence without his co-operation" (the official report for the German Act of 1876 on photographs (now repealed), quoted by Mr. Gouriou at p. 62). Thus the photograph is the result of a series of preparatory acts by the operator with a view to permanent recording on the sensitised material; the actual recording is done by the camera alone, but then the photographer comes into his own again and performs various manipulations with the aid of chemicals. All in all, there is a co-operation between human judgment and technology. The latter, as Mr. Gouriou rightly observes, plays a definite part in the making of the negative. Hence, to place photographs on the same footing as works of art would be to ignore a difference of nature which should be matched by an inequality in protection.

One possible method would be to shorten the term of copyright in photographs as compared with that in artistic works. This would be the most sensible course to take, for if no one can deny that photographs should be shielded against unauthorised reproduction (as Professor Desbois says in his fine treatise on copyright, at p. 137), there is little choice but to resort to the same forms of protection as for true copyright, i.e. the exclusive right or the compulsory licence accompanied by fair remuneration. Whether photographs are included *de plano* in the mass of subject-matter to which the general Copyright Act applies, whether a special sub-

division is made in the general Act or a different Act for certain products or services akin to literary and artistic works to include photographs *inter alia*, or whether an Act is devoted to the subject of photographs alone, the protection will always have to be patterned on copyright protection, even though the term of protection may differ.

The German *Ministerialentwurf* of 1959 devotes a special Part II in the general Copyright Act to what it calls kindred rights (*verwandte Schutzrechte*). Photographs, which at present are looked after by the Copyright (Artistic and Photographic) Act, would be relegated to the Part dealing with kindred rights, on account of their resemblance—but no more than a resemblance—to artistic works. This would make the systematic classification a lot neater, though the photographers may feel they are losing caste. In my view they would be wrong to think so, because even now photographs enjoy a shorter term of protection than works of art; and it is precisely this that will in future distinguish the copyright from the right akin to copyright.

In France the situation is somewhat compromised by the 1957 Act to which the concept of neighbouring or kindred rights is altogether foreign. However, since the authorities are mostly hostile to the idea (now written into the Act) of leaving it to the Court's discretion to determine what is and what is not a copyright photograph, Mr. Gouriou, who sides with the legal authorities, has come up with a reform of his own. He does not think that a neighbouring (or kindred, or cognate) right can properly subsist in a photograph. As he sees it, photographers are to all intents and purposes authors, whereas performers, record manufacturers and broadcasters "are mere accessories after the fact in the process of artistic creation, and come into the picture only when the work is already in being". Dependent as they are on an unbending technique, photographers do not quite rank with authors, but they ought not to be placed on the same footing as employees "whose only role is to put their skill at the service of an existing work" (p. 78).

These reflections strike me as not being quite fair. The interpretative function of the performer ought not to be pooh-poohed. The great virtuosos put their soul into their playing, and this personal element brings them very close to the authors. Mr. Gouriou sees the intellectual property of the future in the form of a ladder, each rung of which would have its own particular status. It all seems rather complicated. Admittedly, the rights neighbouring on copyright are not all equally close neighbours... but they are round and about copyright,

and that is enough. In my opinion, a single Act should embrace the whole body of neighbouring rights, providing, of course, that it has regard to the distinctive features of the different types of subject-matter. Mr. Gouriou is in favour of a special Act for the exclusive purpose of setting to rights the sad treatment meted out to photographs in France: being likened in principle to works of art, all photographs would be eligible for copyright, but for a lesser duration, beginning with the date on which they were made. Proof of the date of origin would be given by a deposit formality which would vest the copyright. Could this be demanded of photographers in countries of the Union? It is hardly likely, for the revised Berne Convention does not admit of formalities. This difficulty is all the more serious in that the Convention declares that photographs are copyright in all the countries of the Union (Article 2 (4) of the text drawn up in Brussels in 1948). With such an imperative clause in hand, photographers should not be affected by the deposit requirement, as they can always claim the conventional treatment.

The Gouriou proposal thus raises a delicate point, though this is not a reason for rejecting it outright. An Act on neighbouring or kindred rights is not in the offing in France. An Act on photographs would remedy the immediate problem, and would by reason of its contents amount to a start on legislation on such rights. It is beyond doubt that French law needs changing on the point in question, and one can only be grateful to Mr. Gouriou for his wide-ranging and persuasive argument. As far back as 1950 Professor Henri Desbois (*op. cit.*, p. 141) regretted that the draftsmen of the Literary and Artistic Property Act had their hands tied by the *status quo* of case law in the field of photography. His advice went unheeded, alas. But it is never too late to mend.

It appears from the cover that Mr. Gouriou's book has been awarded a grant from the Ministry of Education, so presumably the author's ideas have aroused attention in official circles. An amending Act of limited objectives, previously approved by those concerned, would not make much work for Parliament, which is amply shielded against overstrain by both the Constitution and the Executive of the Fifth Republic.

In the second part of his book, Mr. Gouriou discusses the application of the prerogatives of authorship granted to photographers. The information he has collected and carefully classified represents a real handbook on the subject, where the practitioner will find well-chosen suggestions and examples.

B. M.

EBU Activities

Eleventh ordinary session of the Legal Committee

The 11th Ordinary Session of the EBU Legal Committee was held in Oslo from 20th to 24th September and was attended by the representatives of sixteen active member organisations of the EBU. The Chairman, Mr. Lenoble, presided with the assistance of the two Vice-Chairmen, Professor Greco and Dr. Brack.

As the logical outcome of the many changes that had taken place during the first ten years of its existence, the Committee extensively reorganised its own structure and working. The Bureau, which hitherto consisted of nine member organisations, was made a purely executive body comprising the four organisations to which the Chairman and the three Vice-Chairmen belong, a third Vice-Chairman being appointed under the new arrangements. The Committee itself will meet twice a year in plenary session, and in the interval between sessions the Bureau will function as a body to implement the decisions taken. For two consecutive years beginning 1st January 1961 the Committee again elected Mr. Lenoble (RTF) as its Chairman and entrusted the three Vice-Chairmanships to Dr. Brack (ARD), an outgoing Vice-Chairman, and to Mr. Namurois (RTB) and Mr. Robbins (BBC), both of whom will be serving in this capacity for the first time. Professor Greco, who had been a Vice-Chairman for a number of years, had declined to stand again for re-election, and in recognition of the services he had rendered the Committee bestowed upon him the title of Honorary Chairman of the EBU Legal Committee.

The agenda was a heavy one, and many of the items were particularly important for the future of broadcasting. One such item was the draft Convention on "neighbouring rights" which, as readers know, was prepared in The Hague last May, and which led to a detailed exchange of views culminating in four recommendations to the Administrative Council. In a related field the Committee took note with satisfaction of the completion of the European Agreement on the Protection of Television Broadcasts and decided to recommend that it be signed and ratified by all countries eligible to become parties to it. It may be mentioned in passing that to date the following eleven countries have signed this instrument: Belgium, Denmark, France (not subject to ratification), the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Sweden, Turkey and the United Kingdom.

The free access of television organisations to places where events of public interest are happening was also examined at some length, since the Secretary-General of the Council of Europe had been instructed to study this problem and report to the Committee of Legal Experts on Television set up by the Committee of Ministers of the Council of Europe. Conclusions were drawn up in the form of a document for submission to the Administrative Council.

In the sphere of copyright several questions claimed the Committee's attention, foremost among them being the *domaine public payant* and the forthcoming revision of the

Berne Convention. As might be expected, the Committee was opposed to the *domaine public payant*. Whether it be a copyright *stricto sensu* or just a tax, there is no valid justification either in law or in fact for further burdening the budgets of the broadcasting organisations. With regard to the revision of the Berne Convention, the Committee gave more specific directives for the report it had called for on the provisions which it would be desirable to amend, and needless to add decided to keep the matter on its agenda.

The Committee took up for the second time the question of broadcasting stations on board ship outside territorial waters that were blanketing nearby States with their commercial broadcasts. After having discussed a very substantial report submitted by the Norwegian broadcasting organisation and written by a noted expert in international public law, the Committee decided to request the Council to send members two further recommendations, both of them founded on the utter illegality of mobile sound and visual broadcasting stations from the viewpoint both of the general rules of international law and the specific rules of law on telecommunications.

As the relations between Eurovision and the newsfilm agencies called for urgent solution, the Committee approved certain draft standard contracts which would enable signatory organisations to use sequences transmitted over the European network without their having a regular subscription contract with the agency supplying the material. Those who are familiar with the problems raised by Eurovision at the present time will appreciate what a help this will be in bringing order into what was hitherto a somewhat confused situation. On the same subject of standard contracts the Committee gave its approval to the revised text of a document laying down the conditions for the interchange of telefilms and tele-recordings between members of the EBU on a non-commercial basis.

Among the new items was one relating to the growing use of "concrete" and electronic music in broadcasts. A working party was set up to consider the various aspects of this type of broadcast, so that the Committee could reach the necessary conclusions at its next session.

The demand by the international performers' federations for an international agreement to govern exchanges in sound radio was carefully examined and a specific recommendation was drafted to enable the Administrative Council to take an informed decision.

Other questions relating to the music publishers and the authors' societies were dealt with, and instructions were given to the Secretary that will enable him to pursue the negotiations now in progress.

The Committee had the privilege of being invited by the RAI to hold its next (Spring) session in Italy, and it will doubtless be held at the beginning of April next year.

The Committee was unanimous in thanking the Norwegian broadcasting organisation, and particularly the Director-General, Mr. Fostervoll, and the Legal Adviser, Mrs. Kragem, for the excellent organisation of the Oslo session and the entertainments it had been kind enough to provide to relieve the austerity of the deliberations.

In Part A (Technical) of EBU Review No. 64

you will find:

an article by G. ORSINI describing some of the problems encountered by the RAI in televising the Olympic Games, Rome, 1960;

a paper by L.E. WEAVER on new methods of measuring "noise" in television signals;

a study by H. MERTENS on the use of an analogue computer for determining the spectrum of compatible single-sideband modulation;

news items concerning the technical activities of sound and television broadcasting services, including descriptions of a new mobile television tape-recording unit belonging to the Südwestfunk in Germany, the recording facilities of the national television service in Australia, the means employed by the NHK for transmitting television recordings from Italy to Japan during the recent Olympic Games, a transistored FM drive modulator designed by the BBC and prototype transistorised programme-input equipment recently introduced by Sveriges Radio;

lists of changes in the occupation of the sound and television broadcasting bands in Europe, up to 1st November, 1960;

a chart indicating the situation in the long-wave and medium-wave broadcasting bands in the European Area as on 1st November, 1960;

a report on the 12th meeting of the EBU Technical Committee, held at Monte Carlo, September, 1960.

— « J'ai entendu à la radio... »

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Deux phrases courantes, quotidiennes, qui prennent une valeur complémentaire dans la période de relations internationales troublées que nous vivons.

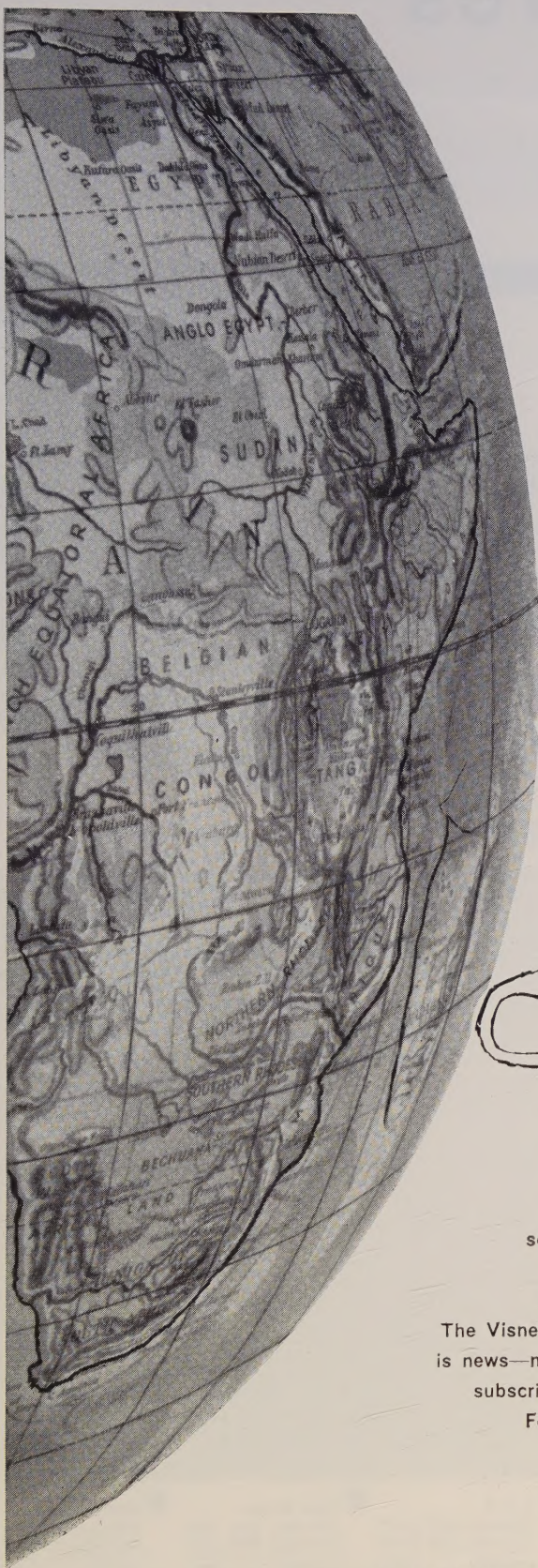
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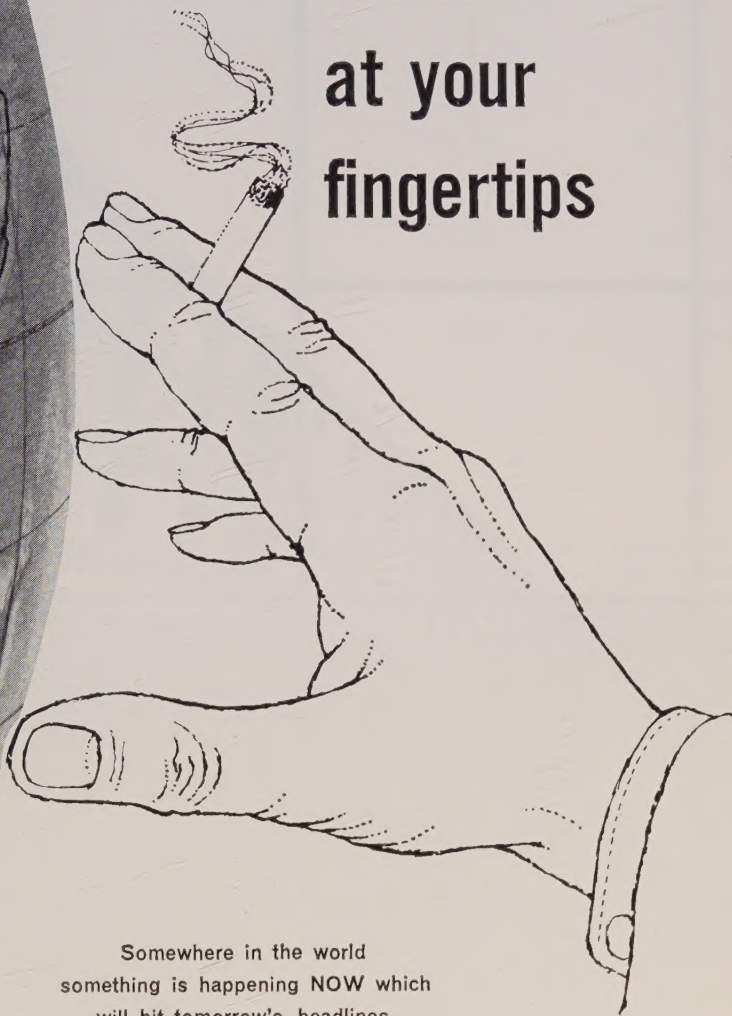
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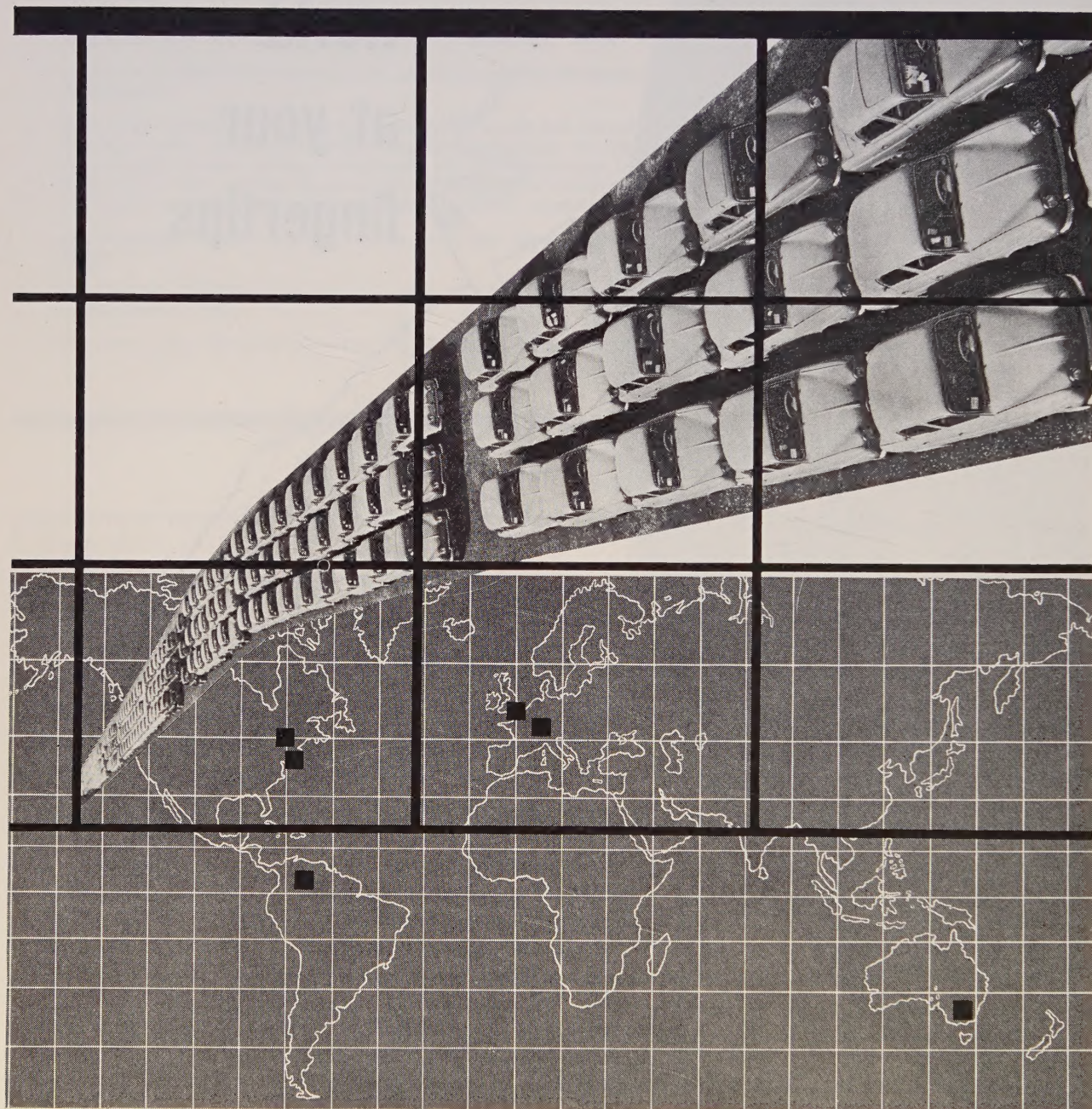
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